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ART. II. — A CHAPTER OF ERIE.

EVERY generation during the last six hundred years, it is currently supposed, has seen something of the animal educated out of the Caucasian type of man. But progress in this direction has been neither so rapid nor so steady as many sanguine believers in the approaching millennium are disposed to hold. Often the old enemy confronts us in a new and more specious form, and experience then steadily teaches us that, in practice, vice by no means loses half its evil in losing all its grossness. Take, for instance, some of the cardinal vices and abuses of the imperfect past. The practice of piracy, it was thought, was battered and hung out of existence when the Barbary Powers and the pirates of the Spanish Main had been finally dealt with. But the freebooters have only transferred their operations to the land, and the commerce of the world is now more severely, though far more equally, taxed through the machinery of rings and tariffs, selfish money combinations at business centres, and the unprincipled corporate control of great lines of railway, than ever it was by depredations outside of the law. Gambling has ceased to be fashionable, and Crockford's doors were closed years ago, so that in this respect too a victory is claimed for an advancing civilization. But this seems to be another error. Gambling is a business now, where formerly it was a disreputable excitement, and is called by some such euphemism as "operating," "financiering," or the like. Again, legislative bribery and corruption were, within memory, looked upon as antiquated misdemeanors, almost peculiar to the unenlightened period that expired with Walpole and Holland, and the revival of them regarded as impossible in the face of modern public opinion. This is a third error. It is no longer the practice of Governments and Ministries to buy legislators; but individuals and corporations have of late not unfrequently found them commodities for sale in the market. So with judicial venality and ruffianism on the bench. Bacon was impeached and Jeffries made infamous for offences against good morals and common decency which a self-satisfied civilization believes incompatible

with its present development. Recent revelations, however, have cast grave doubts on the correctness even of this assumption. Altogether, there is more to be said than is commonly believed in favor of the morality of the past as compared with that of the present day.

No better illustration of the fantastic guises which the worst commonplace evils of history assume, as they meet us in the movements of the day, could be afforded than was seen in the events attending what are known as the Erie wars of the year 1868. Beginning in February and lasting until December, raging fiercely in the late winter and spring, and dying away into a hollow truce at midsummer, only to revive into new and more vigorous life in the autumn, this strange conflict convulsed the money market, occupied the courts, agitated legislatures, and perplexed the country, throughout the entire year. Its history has not been fully written and probably never will be; yet it should not be wholly forgotten. It was something new to see a band of conspirators possess themselves of a road, more important than was ever the Appian Way, and make levies, not only upon it for their own emolument, but, through it, on the whole business of a nation. Nor could it fail to be seen that this was by no means the end, but only the beginning. The American people cannot afford to glance at this thing in the columns of the daily press, and then dismiss it from memory. It involves too many questions; it touches too nearly the national life.

The history of the Erie Railway has been a checkered one. Chartered in 1832, and organized in 1833, the cost of its construction was then estimated at three millions of dollars, of which but one million were subscribed. By the time the first report was made, the estimated cost had increased to six millions, and the work of construction was actually begun on the strength of stock subscriptions of a million and a half, and a loan of three millions from the State. In 1842 the estimated cost had increased to twelve millions and a half, and both means in hand and credit were wholly exhausted. Subscription books were opened, but no names were entered in them; the city of New York was applied to, and refused a loan of its credit; again the legislature was be

sieged, but the aid from this quarter was now hampered with inadmissible conditions ; accordingly work was suspended, and the property of the insolvent corporation passed into the hands of assignees. In 1845 the State came again to the rescue ; it surrendered all claim to the three millions it had already lent to the company ; and one half of their old subscriptions having been given up by the stockholders, and a new subscription of three millions raised, the whole property of the road was mortgaged for three millions more. At last, in 1851, eighteen years after its commencement, the road was opened from Lake Erie to tide-water. Its financial troubles had, however, as yet only begun, for, in 1859, it could not meet the interest on its mortgages, and passed into the hands of a receiver. In 1861 an arrangement of interests was effected, and a new company was organized. The next year the old New York and Erie Railroad Company disappeared under a foreclosure of the fifth mortgage, and the present Erie Railway Company rose from its ashes. Meanwhile the original estimate of three millions had developed into an actual outlay of fifty millions ; the 470 miles of track opened in 1842 had expanded into 773 miles in 1868 ; and the revenue, which the projectors had "confidently" estimated at something less than two millions in 1833, amounted to over five millions when the road passed into the hands of a receiver in 1859, and in 1865 reached the enormous amount of sixteen millions and a half. The road was, in truth, a magnificent enterprise, worthy to connect the great lakes with the great seaport of America. Scaling lofty mountain ranges, running through fertile valleys and by the banks of broad rivers, connecting the Hudson, the Susquehanna, the St. Lawrence, and the Ohio, it stood forth a monument at once of engineering skill and of commercial enterprise.

Some seventeen or eighteen years ago, Mr. Daniel Drew first made his appearance in the Board of Directors of the Erie, where he remained down to the year 1868, generally holding also the office of treasurer of the corporation. Mr. Drew is what is known as a self-made man. Born in the year 1797, as a boy he drove cattle down from his native town of Carmel, in Putnam County, to the market of New York City,

and, subsequently, was for years proprietor of the Bull's Head Tavern. Like his contemporary, and ally or opponent, — as the case might be, — Cornelius Vanderbilt, he built up his fortunes in the steamboat interest, and subsequently extended his operations over the rapidly developing railroad system. Shrewd, unscrupulous, and very illiterate, — a strange combination of superstition and faithlessness, of daring and timidity, — often good-natured and sometimes generous, — he has ever regarded his fiduciary position of director of a railroad as a means of manipulating its stock for his own advantage. For years he has been the leading bear of Wall Street, and his favorite haunts have been the secret recesses of Erie. As treasurer of that corporation, he has, in its frequently recurring hours of need, advanced it sums which it could not have obtained elsewhere, and the obtaining of which was a necessity. His management of his favorite stock has been cunning and recondite, and his ways inscrutable. Those who sought to follow him, and those who sought to oppose him, alike found food for sad reflection; until at last he won for himself the expressive *sobriquet* of the Speculative Director. Sometimes, though rarely, he suffered greatly in the complications of Wall Street; more frequently he inflicted severe damage upon others. On the whole, however, his fortunes had greatly prospered, and the outbreak of the Erie war found him the actual possessor of some millions, and the reputed possessor of many more.

In the spring of 1866 Mr. Drew's manipulations of Erie culminated in an operation which was at the time regarded as a masterpiece, but which subsequent experience has so improved upon that it is now looked on as an ordinary and inartistic piece of financiering. The stock of the road was at that time selling at about 95, and the corporation was, as usual, in debt, and in pressing need of money. As usual, also, it resorted to its treasurer. Mr. Drew stood ready to make the desired advances upon security. Some twenty-eight thousand shares of its own authorized stock, which had never been issued, were at the time in the hands of the company, which also claimed the right, under the statutes of New York, of raising money by the issue of bonds convertible, at the option of the holder, into stock. The twenty-eight thousand unissued shares and

bonds for three millions of dollars, convertible into stock, were placed by the company in the hands of its treasurer, as security for a cash loan of \$3,500,000. The negotiation had been quietly effected, and Mr. Drew's campaign now opened. Once more he was short of Erie. While Erie was buoyant,—while it steadily approximated to par,—while speculation was rampant, and that outside public, the delight and the prey of Wall Street, was gradually drawn in by the fascination of amassing wealth without labor,—quietly and stealthily, through his agents and brokers, the grave, desponding operator was daily concluding his contracts for the future delivery of stock at current prices. At last the hour had come. Erie was rising, Erie was scarce, the great bear had many contracts to fulfil, and where was he to find the stock? His victims were not kept long in suspense. Mr. Treasurer Drew laid his hands upon his collateral. In an instant the bonds for three millions were converted into an equivalent amount of capital stock, and fifty-eight thousand shares, dumped, as it were, by the cart-load in Broad Street, made Erie as plenty as even Drew could desire. Before the astonished bulls could rally their faculties, the quotations had fallen from 95 to 50, and they realized that they were hopelessly entrapped.

The whole transaction, of course, was in no respect more creditable than any game, supposed to be one of chance or skill, the result of which is made to depend upon the sorting of a pack of cards, the dosing of a racehorse, or the selling out of his powers by a "walkist." But the gambler, the patron of the turf, or the pedestrian represents, as a rule, no one but himself, and his character is generally so well understood as to be a warning to all the world. The case of the treasurer of a great corporation is different. He occupies a fiduciary position. He is a trustee,—a guardian. Vast interests are confided to his care; every shareholder of the corporation is his ward; if it is a railroad, the community itself is his *cestui que trust*. But passing events, accumulating more thickly with every year, have thoroughly corrupted the public morals on this subject. A directorship in certain great corporations has come to be regarded as a situation in which to make a fortune, the possession of which is no longer dishonorable. The method of accumulation

is both simple and safe. It consists in giving contracts as a trustee to one's self as an individual, or in speculating in the property of one's *cestui que trust*, or in using the funds confided to one's charge, as treasurer or otherwise, to gamble with the real owners of those funds for their own property, and that with cards packed in advance. These proceedings are looked upon as hardly reprehensible. The wards themselves expect their guardians to throw the dice against them for their own property, and are surprised, as well as gratified, if the dice are not loaded.

No acute moral sensibility has, however, for some years troubled either Wall Street or the country at large. As a result of the transaction of 1866, Mr. Drew was looked upon as having effected a surprisingly clever operation, and he retired from the field hated, feared, wealthy, and admired. This episode of Wall Street history took its place as a brilliant success beside the famous Prairie du Chien and Harlem "corners," and, but for subsequent events, would soon have been forgotten. Its close connection, however, with more important though later incidents of Erie history seems likely to preserve its memory. Great events were impending; a new man was looming up in the railroad world, introducing novel ideas and principles, and it could hardly be that the new and old would not come in conflict. Cornelius Vanderbilt, commonly known as Commodore Vanderbilt, was now developing his theory of the management of railroads.

Born in the year 1794, Vanderbilt is a somewhat older man than Drew. There are several points of resemblance in the early lives of the two men, and many points of curious contrast in their characters. Vanderbilt, like Drew, was born in very humble circumstances in the State of New York, and received as little education. He began life by ferrying over passengers and produce from Staten Island to New York. Subsequently, he too laid the foundation of his great fortune in the growing steamboat navigation, and likewise, in due course of time, transferred himself to the railroad interest. When at last, in 1868, the two came into collision as representatives of the old system of railroad management and of the new, they were each of them threescore and ten years of age, and had

both been successful in the accumulation of millions, — Vanderbilt even more so than Drew. They were probably equally unscrupulous and equally selfish ; but, while the cast of Drew's mind was sombre and bearish, Vanderbilt was gay and buoyant of temperament, little given to thoughts other than of this world, a lover of horses and of the good things of this life. The first affects prayer-meetings, and the last is a devotee of whist. Drew, in Wall Street, is by temperament a bear, while Vanderbilt could hardly be other than a bull. Vanderbilt must be allowed to be by far the superior man of the two. Drew is astute and full of resources, and at all times a dangerous opponent ; but Vanderbilt takes larger, more comprehensive views, and his mind has a vigorous grasp which that of Drew seems to want. While, in short, in a wider field, the one might have made himself a great and successful despot, the other would hardly have aspired to be more than the head of the jobbing department of some corrupt government. Accordingly, while in Drew's connection with the railroad system his operations and manipulations evince no qualities calculated to excite even a vulgar admiration or respect, it is impossible to regard Vanderbilt's methods or aims without recognizing the magnitude of the man's ideas and conceding his abilities. He involuntarily excites feelings of admiration for himself and alarm for the public. His ambition is a great one. It seems to be nothing less than to make himself master in his own right of the great channels of communication which connect the city of New York with the interior of the continent, and to control them as his private property. While Drew has sought only to carry to perfection the old system of operating successfully from the confidential position of director, neither knowing anything nor caring anything for the railroad system except in its connection with the movements of the stock exchange, Vanderbilt has seen the full magnitude of the system, and through it has sought to make himself a dictator in modern civilization, moving forward to this end step by step with a sort of pitiless energy which has seemed to have in it an element of fatality. As trade now dominates the world, and the railways dominate trade, his object has been to make himself the virtual master of all by making himself absolute lord

of the railways. Had he begun his railroad operations with this end in view, complete failure would have been almost certainly his reward. Commencing as he did, however, with a comparatively insignificant objective point,—the cheap purchase of a bankrupt stock,—and developing his ideas as he advanced, his power and his reputation grew, until an end which it would have seemed madness to entertain at first became at last both natural and feasible.

Two great lines of railway traverse the State of New York and connect it with the West,—the Erie and the New York Central. The latter communicates with the city by a great river and by two railroads. To get these two roads—the Harlem and the Hudson River—under his own absolute control, and then, so far as the connection with the Central was concerned, to abolish the river, was Vanderbilt's immediate object. First making himself master of the Harlem Road, he there learned his early lessons in railroad management, and picked up a fortune by the way. A few years ago Harlem had no value. As late as 1860 it sold for 8 or 9 dollars per share; and in January, 1863, when Vanderbilt had got the control, it had risen only to 30. By July of that year it stood at 92, and in August was suddenly raised by a "corner" to 179. The next year witnessed a similar operation. The stock, which sold in January at less than 90, was settled for in June in the neighborhood of 285. On one of these occasions Mr. Drew is reported to have contributed a sum approaching half a million to his rival's wealth. Of late the stock has been floated at about 130. It was in the successful conduct of this first experiment that Vanderbilt showed his very manifest superiority over previous railroad managers. The Harlem was, after all, only a competing line, and competition was proverbially the rock ahead in all railroad enterprise. The success of Vanderbilt with the Harlem depended upon his getting rid of the competition of the Hudson River Railroad. An ordinary manager would have resorted to contracts, which are never carried out, or to opposition, which is apt to be ruinous. Vanderbilt, on the contrary, put an end to competition by buying up the competing line. This he did in the neighborhood of par, and, in due course of time, the stock was sent up to 180. Thus his plans had developed by another step, while, through a judicious course of financiering and watering

and dividing, a new fortune had been secured by him. By this time Vanderbilt's reputation as a railroad manager — as one who earned dividends, invented stock, and created wealth — had become very great, and the managers of the Central brought that road to him, and asked him to do with it as he had done with the Harlem and Hudson River. He accepted the proffered charge, and now, probably, the possibilities of his position and the magnitude of the prize within his grasp at last dawned on his mind. Unconsciously to himself, working more wisely than he knew, he had brought to its logical conclusion the development of one potent element of modern civilization.

Gravitation is the rule, and centralization the natural consequence, in society no less than in physics. Physically, morally, intellectually, in population, wealth, and intelligence, all things tend to consolidation. One singular illustration of this law is almost entirely the growth of this century. Formerly, either governments, or individuals, or, at most, small combinations of individuals, were the originators of all great works of public utility. Within the present century only has democracy found its way into the combinations of capital, small shareholders combining to carry out the most extensive enterprises. And yet already our great corporations are fast emancipating themselves from the state, or rather subjecting the state to their own control, while individual capitalists, who long ago abandoned the attempt to compete with them, will next seek to control them. In this dangerous path of centralization Vanderbilt has taken the latest step in advance. He has combined the natural power of the individual with the factitious power of the corporation. The famous "*L'état, c'est moi*" of Louis XIV. represents Vanderbilt's position in regard to his railroads. Unconsciously he has introduced Cæsarism into corporate life. He has, however, but pointed out the way which others will tread. The individual will hereafter be engrafted on the corporation, — democracy running its course, and resulting in imperialism; and Vanderbilt is but the precursor of a class of men who will wield within the state a power created by it, but too great for its control. He is the founder of a dynasty.

From the moment Vanderbilt stepped into the management of the Central, but a single effort seemed necessary to give

the new railroad king absolute control over the railroad system, and consequently over the commerce, of New York. By advancing only one step he could securely levy his tolls on the traffic of a continent. Nor could this step have seemed difficult to take. It was but to repeat with the Erie his successful operation with the Hudson River Road. Not only was it a step easy to take, but here again, as so many times before, a new fortune seemed ready to drop into his hand. The Erie might well yield a not less golden harvest than the Central, Hudson River, or Harlem Road; there was indeed but one obstacle in the way, — the plan might not meet the views of the one man who at that time possessed the wealth, cunning, and combination of qualities which could defeat it, that man being the Speculative Director of the Erie, — Mr. Daniel Drew.

The New York Central passed into Vanderbilt's hands in the winter of 1866–67, and he marked the Erie for his own in the succeeding autumn. As the annual meeting of the corporation approached, three parties were found in the field contending for control of the road. One party was represented by Drew, and might be called the party in possession, — that which had long ruled the Erie, and made it what it was, — the Scarlet Woman of Wall Street. Next came Vanderbilt, flushed with success, and bent upon his great idea of developing imperialism in corporate life. Lastly a faction made its appearance composed of some shrewd and ambitious Wall Street operators and of certain persons from Boston, who sustained for the occasion the novel character of railroad reformers. This party, it is needless to say, was as unscrupulous and, as the result proved, as able as either of the others; it represented nothing but a raid made upon the Erie treasury in the interest of a thoroughly bankrupt New England corporation of which its members had the control. The history of this corporation, known as the Boston, Hartford, and Erie Railroad, — a projected feeder and connection of the Erie, — would be one curious to read, though very difficult to write. Its name was synonymous with bankruptcy, litigation, fraud, and failure. If the Erie was of doubtful repute in Wall Street, the Boston, Hartford, and Erie had long been of worse than doubtful repute in State Street. Of late years, under able and persevering, if not scrupulous

management, the bankrupt, moribund company had been slowly struggling into new life, and in the spring of 1867 it had obtained, under certain conditions, from the Commonwealth of Massachusetts, a subsidy in aid of the construction of the road. One of the conditions imposed obliged the corporation to raise a sum from other sources still larger than that granted by the State. Accordingly, those having the line in charge looked abroad for a victim, and fixed their eyes upon the Erie.

As the election day drew near, Erie was of course for sale. A controlling interest of stockholders stood ready to sell their proxies, with entire impartiality, to any of the three contending parties, or to any man who would pay the market price for them. Nay, more, the attorney of one of the contending parties, as it afterwards appeared, actually sold the proxies of his principal to another of the contestants, and his doing so seemed to excite no serious surprise. Meanwhile the representatives of the Eastern interest played their part to admiration. Taking advantage of some Wall Street complications just then existing between Vanderbilt and Drew, they induced the former to ally himself with them, and the latter saw that his defeat was inevitable. Even at this time the Vanderbilt party contemplated having recourse, if necessary, to the courts, and a petition for an injunction had been prepared, setting forth the details of the "corner" of 1866. On the Sunday preceding the election, Drew, in view of his impending defeat, called upon Vanderbilt. That gentleman thereupon very amicably read to him the legal documents prepared for his benefit, whereupon the ready treasurer at once turned about, and, having hitherto been hampering the Commodore by his bear operations, he now agreed to join hands with him in giving to the market a strong upward tendency. Meanwhile the other parties to the contest were not idle. At the same house, at a later hour in the day, Vanderbilt explained to the Eastern adventurers his new plan of operations, which included the continuance of Drew in his directorship. These gentlemen were puzzled, not to say confounded, by this sudden change of front. An explanation was demanded, some plain language followed, and the parties separated, only to meet again at a later hour at the house of Drew. There Vanderbilt brought the new men to

terms by proposing to Drew a bold *coup de main*, calculated to throw them entirely out of the direction. Before the parties separated that night, a written agreement had been entered into, providing that, to save appearances, the new board should be elected without Drew, but that immediately thereafter a vacancy should be created, and Drew chosen to fill it. He was therefore to go in as one of two directors in the Vanderbilt interest, that gentleman's nephew, Mr. Work, being the other.

This programme was faithfully carried out, and on the 2d of October Wall Street was at once astonished by the news of the defeat of the notorious leader of the bears, and bewildered by the immediate resignation of a member of the new board and the election of Drew in his place. Apparently he had given in his submission, the one obstacle to success was removed, and the ever-victorious Commodore had now but to close his fingers on his new prize. Virtual consolidation in the Vanderbilt interest seemed a foregone conclusion.

The reinstalment of Drew was followed by a period of hollow truce. A combination of capitalists, in pursuance of an arrangement already referred to, took advantage of this to transfer as much as possible of the spare cash of the "outside public" from its pockets to their own. A "pool" was formed, in view of the depressed condition of Erie, and Drew was left to manipulate the market for the advantage of those whom it might concern. The result of the Speculative Director's operations supplied a curious commentary on the ethics of the stock exchange, and made it questionable whether the ancient adage as to honor extends to its combinations. One contributor to the "pool," in this instance, was Mr. —, a friend of Vanderbilt. The ways of Mr. Drew were, as usual, past finding out; Mr. —, however, grew impatient of waiting for the anticipated rise in Erie, and it occurred to him that, besides participating in the profits of the "pool," he might as well turn an honest penny by collateral operations on his own account, looking to the expected rise. Before embarking on his independent venture, however, he consulted Mr. Drew, it is said, who entirely declined to express any judgment as to the venture, but at the same time agreed to loan Mr. — out of the

"pool" any moneys he might require upon the security usual in such cases. Mr. ——— availed himself of the means thus put at his disposal, and laid in a private stock of Erie. The expected rise, however, still did not take place. Again he applied to Mr. Drew for information, but with no better success than before; and again, tempted by the cheapness of Erie, he borrowed further funds of the "pool," and made new purchases of stock. At last the long-continued depression of Erie aroused a dreadful suspicion in the bull operator, and inquiries were set on foot. He then discovered, to his astonishment and horror, that his stock had come to him through certain of the brokers of Mr. Drew. The members of the "pool" were at once called together, and Mr. Drew was appealed to on behalf of Mr. ———. It was suggested to him that it would be well to run Erie up to aid a confederate. Thereupon, with all the coolness imaginable, Mr. Drew announced that the "pool" had no Erie and wanted no Erie; that it had sold out its Erie and had realized large profits, which he now proposed to divide. Thereafter who could pretend to understand Daniel Drew? who could fail to appreciate the humors of Wall Street? The controller of the "pool" had actually lent the money of the "pool" to one of the members of the "pool," to enable him to buy up the stock of the "pool"; and having thus quietly saddled him with it, the controller proceeded to divide the profits, and calmly returned to the victim a portion of his own money as his share of the proceeds. Yet, strange to say, Mr. ——— wholly failed to see the humorous side of the transaction, and actually feigned great indignation.

This, however, was a mere sportive interlude between the graver scenes of the drama. The real conflict was now impending. Commodore Vanderbilt stretched out his hand to grasp Erie. Erie was to be isolated and shut up within the limits of New York; it was to be given over, bound hand and foot, to the lord of the Central. To perfect this programme, the representatives of all the competing lines met, and a proposition was submitted to the Erie party looking to a practical consolidation and a division among the contracting parties of the earnings from the New York City travel. A new illustration was thus

to be afforded, at the expense of the trade and travel to and from the heart of a continent, of George Stephenson's famous aphorism, that where combination is possible competition is impossible. The Erie party, however, represented that their road earned more than half of the fund of which they were to receive only one third. They remonstrated and proposed modifications, but their opponents were inexorable. The terms were too hard; the conference led to no result, and the war broke out afresh.

Then Vanderbilt, foiled in his attempt, went into Wall Street, prepared to make himself master of the Erie, as before he had made himself master of the Hudson River Road. The task in itself was one of magnitude. The volume of stock was immense; all of it was upon the street, and the necessary expenditure involved many millions of dollars. The peculiar difficulty of the task, however, lay in the fact that it had to be undertaken in the face of antagonists so bold, so subtle, so unscrupulous, so thoroughly acquainted with Erie, as well as so familiar with all the devices and tricks of fence of Wall Street.

The first open hostilities took place on the 17th of February. For some time Wall Street had been agitated with forebodings of the coming hostilities, but not until that day was recourse had to the courts. Vanderbilt had two ends in view when he sought to avail himself of the processes of law. In the first place, Drew's long connection with Erie, and especially the unsettled transactions arising out of the famous corner of 1866, afforded admirable ground for annoying offensive operations; and, in the second place, these very proceedings, by throwing his opponent on the defensive, afforded an excellent cover for Vanderbilt's own transactions in Wall Street. It was essential to his success to corner Drew, but to corner Drew at all was not easy, and to corner him in Erie was difficult indeed. Experiences since the 1st of January of this year, no less than the memories of 1866, had fully warned the public how manifold and ingenious were the expedients through which the cunning treasurer furnished himself with Erie, when the exigencies of his position demanded fresh supplies. It was, therefore, very necessary for Vanderbilt that he should, while buying Erie up with one hand in Wall Street, with the other close, so far as he

could, that apparently inexhaustible spring from which such generous supplies of new stock were wont to flow. Accordingly, on the 17th of February, Mr. Frank Work, the only remaining representative of the Vanderbilt faction in the Erie direction, accompanied by Mr. Vanderbilt's attorneys, Messrs. Rapallo and Spenser, made his appearance before Judge Barnard, of the Supreme Court of New York, then sitting in chambers, and applied for an injunction against Treasurer Drew and his brother directors, restraining them from the payment of interest or principal of the three and a half millions borrowed of the treasurer in 1866, as well as from releasing Drew from any liability or cause of action the company might have against him, pending an investigation of his accounts as treasurer ; on the other hand, Drew was to be enjoined from taking any legal steps towards compelling a settlement. A temporary injunction was granted in accordance with the petition, and a further hearing was assigned for the 21st. Two days later, however, — on the 19th of the month — without waiting for the result of the first attack, the same attorneys appeared again before Judge Barnard, and now in the name of the people, acting through the Attorney-General, petitioned for the removal from office of Treasurer Drew. The papers in the case set forth some of the difficulties which beset the Commodore, and exposed the existence of a new fountain of Erie stock. It appeared that there was a recently enacted statute of New York which authorized any railroad company to create and issue its own stock in exchange for the stock of any other road under lease to it. Mr. Drew, the petition then alleged, and certain of his brother directors, had quietly possessed themselves of a worthless road connecting with the Erie, and called the Buffalo, Bradford, and Pittsburg Railroad, and had then, as occasion and their own exigencies required, proceeded to supply themselves with whatever Erie stock they wanted by leasing their own road to the road of which they were directors, and then creating stock and issuing it to themselves, in exchange, under the authority vested in them by law. The history of this transaction affords, indeed, a most happy illustration of brilliant railroad financiering. The road cost the purchasers, as financiers, some \$ 250,000 ; as proprietors, they

then issued in its name bonds for two millions of dollars, payable to one of themselves, who now figured as trustee. This person then, shifting his character, drew up, as counsel for both parties, a contract leasing this road to the Erie Railway for four hundred and ninety-nine years, the Erie agreeing to assume the bonds; reappearing in their original character of Erie directors, these gentlemen then ratified the lease, and thereafter it only remained for them to relapse into the role of financiers, and to divide the proceeds. All this was happily accomplished, and the Erie Railway lost and some one gained \$140,000 a year by the bargain. The skilful actors in this much-shifting drama probably proceeded on the familiar theory that exchange is no robbery; and the expedient was certainly ingenious. Commodore Vanderbilt, however, naturally desired to put some limit to the amount of the stock in existence, a majority of which he sought to control. Accordingly it was now further ordered by Mr. Justice Barnard that Mr. Drew should show cause on the 21st why the prayer of the petitioner should not be granted, and meanwhile he was temporarily suspended from his position as treasurer and director.

It was not until the 3d of March, however, that any decisive action was taken by Judge Barnard on either of the petitions before him. Even then that in the name of the Attorney-General was postponed for final hearing until the 10th of the month; but on the application of Work an injunction was issued restraining the Erie board from any new issue of capital stock, by conversion of bonds or otherwise, in addition to the 251,058 shares appearing in the previous reports of the road, and forbidding the guaranty by the Erie of the bonds of any connecting line of road. While this last provision of the order was calculated to furnish food for thought to the Boston party, matter for meditation was supplied to Mr. Drew by other clauses, which specially forbade him, his agents, attorneys, or brokers, to have any transactions in Erie, or fulfil any of his contracts already entered into, until he had returned to the company sixty-eight thousand shares of capital stock, which were alleged to be the number involved in the unsettled transaction of 1866, and the more recent Buffalo, Bradford, and Pittsburg exchange.

A final hearing was fixed for the 10th of March on both injunctions.

Things certainly did not now promise well for Treasurer Drew and the bear party. Vanderbilt and the bulls seemed to have it all their own way. If any virtue existed in the processes of law, if any authority was wielded by a New York court, it now seemed as if the very head of the bear faction must needs be converted into a bull in his own despite, and to his manifest ruin. He, in this hour of his trial, was to be forced by his triumphant opponent to make Erie scarce by returning into its treasury sixty-eight thousand shares, — one fourth of its whole capital stock of every description. So far from manufacturing fresh Erie and pouring it into the street, he was to be cornered by a writ, and forced to work his own ruin in obedience to an injunction. Appearances are, however, proverbially deceptive, and all depended on the assumption that some virtue did exist in the processes of law, and that some authority was wielded by a New York court. In spite of the threatening aspect of his affairs, it was very evident that the nerves of Mr. Drew and his associates were not seriously affected. Wall Street watched him with curiosity not unmingled with alarm; for this was a conflict of Titans. Hedged all around with orders of the court, suspended, enjoined, and threatened with all manner of unheard-of processes, with Vanderbilt's wealth standing like a lion in his path, and all Wall Street ready to turn upon him and rend him, — in presence of all these accumulated terrors of the court-room and of the exchange, — the Speculative Director was not less speculative than his wont. He seemed rushing on destruction. Day after day he pursued the same "short" tactics; contract after contract was put out for the future delivery of stock at current prices, and this, too, in the face of a continually rising market. Evidently he did not yet consider himself at the end of his resources.

It was equally evident, however, that he had not much time to lose. It was now the 3d of March, and the anticipated "corner" might be looked for about the 10th. As usual, some light skirmishing took place as a prelude to the heavy shock of decisive battle. The Erie party very freely and openly expressed

a decided lack of respect, and something approaching contempt, for the purity of that particular fragment of the judicial ermine which — figuratively — adorned the person of Mr. Justice Barnard. They did not pretend to conceal their conviction that this magistrate was a piece of the Vanderbilt property, and they very plainly announced their intention of seeking for justice elsewhere. With this end in view they betook themselves to their own town of Binghamton, in the county of Broome, where they duly presented themselves before Mr. Justice Balcom, of the Supreme Court. The existing judicial system of New York divides the State into eight distinct districts, each of which has an independent Supreme Court of four judges, elected by the citizens of that district. The first district alone enjoys five judges, the fifth being the Judge Barnard already referred to. These local judges, however, are clothed with certain equity powers in actions commenced before them which run throughout the State. As one subject of litigation, therefore, might affect many individuals, each of whom might initiate legal proceedings before any of the thirty-three judges, which judge, again, might forbid proceedings before any or all of the other judges, or issue a stay of proceedings in suits already commenced, and then proceed to make orders, to consolidate actions, and to issue process for contempt, — it was not improbable that, sooner or later, strange and disgraceful conflicts of authority would arise, and that the law would fall into contempt.

Taking advantage of the extreme complication in practice of a system so simple in its theory, the Erie party broke ground in a new suit. The injunction was no sooner asked of Judge Balcom than it was granted, and Mr. Frank Work, the Attorney-General, and all other parties litigant, were directed to show cause at Courtlandville on the 7th of March; and meanwhile, Mr. Director Work, accused of being a spy of the enemy in the councils of Erie, was temporarily suspended from his position, and all proceedings in the suits commenced before Judge Barnard were stayed. The moment, however, that this order became known in New York, a new suit was commenced by the Vanderbilt interest in the name of Richard Schell; and Judge Ingraham cried check to the move of Judge Balcom, by

forbidding any meeting of the Erie board, or the transaction of any business by it, unless Director Work was at full liberty to participate therein. The first move of the Drew faction did not seem likely to result in any signal advantage to their cause.

All this, however, was mere skirmishing, and now the decisive engagement was near at hand. The plans of the Erie ring were matured, and, if Commodore Vanderbilt wanted the stock of their road, they were prepared to let him have all that he desired. As usual the Erie treasury was at this time deficient in funds. As usual, also, Daniel Drew stood ready to advance all the funds required on proper security. One kind of security, and only one, the company was disposed at this time to offer, — their convertible bonds under a pledge of conversion. The company could not issue stock outright, in any case, at less than par; its bonds bore interest, and were useless on the street; an issue of convertible bonds was another name for an issue of stock to be sold at market rates. The treasurer readily agreed to find a purchaser, and, in fact, he himself was just then in pressing need of some scores of thousands of shares. Already at the meeting of the Board of Directors, on the 19th of February, a very deceptive account of the condition of the road, jockeyed out of the general superintendent, had been read and made public; the increased depot facilities, the projected double track, and the everlasting steel rails, had been made to do vigorous duty; and the board had duly authorized the Executive Committee "to borrow such sums as might be necessary, and to issue therefor such security as is provided for in such cases by the laws of this State." Immediately after the Board of Directors adjourned, a meeting of the Executive Committee was held, and a vote to issue at once convertible bonds for ten millions gave a meaning to the very ambiguous language of the directors' resolve; and thus, when apparently on the very threshold of his final triumph, this mighty mass of one hundred thousand shares of new stock was hanging like an avalanche over the head of Vanderbilt.

The Executive Committee had voted to sell the entire amount of these Bonds at not less than 72½. Five millions

were placed upon the market at once, and Mr. Drew's broker became the purchaser,— Mr. Drew giving him a written guaranty against loss and being entitled to any profit that might arise. It was all done in ten minutes after the Committee adjourned,— the bonds issued, their conversion into stock demanded and complied with, and certificates for fifty thousand shares deposited in the broker's safe, subject to the orders of Daniel Drew. There they remained until the 29th, when they were issued, on his requisition, to certain others of that gentleman's army of brokers, much as ammunition might be issued before a general engagement. Three days later came the Barnard injunction, and Erie suddenly rose in the market. Then it was determined to bring up the reserves and let the eager bulls have the other five millions. The history of this second issue was, in all respects, an episode worthy of Erie, and deserves minute relation. It was decided upon on the 3d, but before the bonds were converted Barnard's injunction had been served on every one connected with the Erie Road or with Daniel Drew. The 10th was the return day of the writ, but the Erie operators needed even less time for their deliberations. Monday, the 9th, was settled upon as the day upon which to defeat the impending "corner." The night of Saturday, the 7th, was a busy one in the Erie camp. While one set of counsel and clerks were preparing affidavits and prayers for strange writs and injunctions, the enjoined vice-president of the road was busy at home signing certificates of stock, to be ready for instant use in case a modification of the injunction could be obtained, and another set of counsel was in immediate attendance on the leaders themselves. Mr. Groesbeck, the chief of the Drew brokers, being himself enjoined, secured elsewhere, after one or two failures, a purchaser of the bonds, and took him to the house of the Erie counsel, where Drew and other directors and brokers then were. There the terms of the nominal sale were agreed upon, and a contract drawn up transferring the bonds to this man of straw,— Mr. Groesbeck meanwhile, with the fear of injunctions before his eyes, prudently withdrawing into the next room. After the contract was closed, the purchaser was asked to sign an affidavit setting forth his ownership of the bonds and the refusal of the corpo-

ration to convert them into stock in compliance with their contract, upon which affidavit it was in contemplation to seek from some justice a writ of *mandamus* to compel the Erie Railway to convert them, the necessary papers for such a proceeding being then in course of preparation elsewhere. This the purchaser declined to do. One of the lawyers present then said: "Well, you can make the demand now; here is Mr. Drew, the treasurer of the company, and Mr. Gould, one of the Executive Committee." In accordance with this suggestion a demand for the stock was then made, and, of course, at once refused; thereupon the scruples of the man of straw being all removed, the desired affidavit was signed. All business having now been disposed of, the parties separated; the legal papers were ready, the convertible bonds had been disposed of, and the certificates of stock for which they were to be exchanged were signed in blank and ready for delivery.

Early on Monday morning the Erie people were at work. Mr. Drew, the director and treasurer, had agreed to sell on that day fifty thousand shares of the stock, at 80, to the firms of which Mr. Fisk and Mr. Gould were members, these gentlemen also being Erie directors and members of the Executive Committee. The new certificates, made out in the names of these firms on Saturday night, were in the hands of the secretary of the company, who was strictly enjoined from allowing their issue. On Monday morning this official directed an employee of the road to carry these books of certificates from the West Street office of the company to the transfer clerk in Pine Street, and there to deliver them carefully. The messenger left the room, but immediately returned empty-handed, and informed the astonished secretary that Mr. Fisk had met him outside the door, taken from him the books of unissued certificates, and "run away with them." It was true; — one essential step towards conversion had been taken; the certificates of stock were beyond the control of an injunction. A day or two later the convertible bonds were found upon the secretary's desk, conveyed thither by an unknown hand; the certificates were next seen in Broad Street.

Before launching the bolt thus provided, the conspirators had considered it not unadvisable to cover their proceedings, if they

could, with some form of law. This probably was looked upon as an idle ceremony, but it could do no harm; and perhaps their next step was dictated by what has been called "a decent respect for the opinions of mankind," combined with a profound contempt for judges and courts of law.

Early on the morning of the 9th, Judge Gilbert, a highly respected magistrate of the Second Judicial District, residing in Brooklyn, was waited upon by one of the Erie counsel, who desired to initiate before him a new suit in the Erie litigation, — this time, in the name of the Saturday evening purchaser of bonds and maker of affidavits. A writ of *mandamus* was asked for. This writ clearly did not lie in such a case; the magistrate very properly declined to grant it, and the only wonder is that counsel should have applied for it. New counsel were then hurriedly summoned, and a new petition, in a fresh name, was presented. This petition was for an injunction, in the name of one Belden, the business partner of Mr. Fisk, and the documents then and there presented were probably as eloquent an exposure of the lamentable condition into which the once honored judiciary of New York had fallen as could possibly have been penned. The petition alleged that some time in February certain persons, among whom was especially named George G. Barnard, — the justice of the Supreme Court of the First District, — had entered into a combination to speculate in the stock of the Erie Railway, and to use the process of the courts for the purpose of aiding their speculation; "and that, in furtherance of the plans of this combination," the actions in Work's name had been commenced before Barnard. It is impossible by any criticism to do justice to such audacity as this; the dumb silence of amazement is the only fitting commentary. Apparently, however, nothing that could be stated of his colleague across the river exceeded the belief of Judge Gilbert, for, after some trifling delays and a few objections on the part of the judge to the form of the desired order, the Erie counsel returned to New York with a new injunction, restraining all the parties to all the other suits from further proceedings, and from doing any acts in "furtherance of said conspiracy;" — in one paragraph ordering the Erie directors, except Work, to continue in the dis-

charge of their duties, in direct defiance of the injunction of Judge Ingraham, and in another, with an equal disregard of Judge Barnard, forbidding the directors to desist from converting bonds into stock. Judge Gilbert having, a few hours before signing this wonderful order, refused to issue a writ of *mandamus*, it may be proper to add that the process of equity here resorted to, compelling the performance of various acts, is of recent invention, and is known as a "mandatory injunction."

All was now ready. The Drew party was enjoined in every direction. One magistrate had forbidden them to move, and another magistrate had ordered them not to stand still. If the Erie board held meetings and transacted business, it violated one injunction; if it abstained from so doing, it violated another. By the further conversion of bonds into stock pains and penalties would be incurred at the hands of Judge Barnard; the refusal to convert would be an act of disobedience to Judge Gilbert. Strategically considered, the position could not be improved, and Mr. Drew and his friends were not the men to let the golden moment escape them. At once, before even in New York a new injunction could be obtained, fifty thousand shares of new Erie stock were flung upon the market. That day Erie was buoyant, — Vanderbilt was purchasing. His agents caught at the new stock as eagerly as at the old, and the whole of it was absorbed before its origin was suspected, and almost without a falter in the price. Then the fresh certificates appeared, and the truth became known. Erie had that day opened at 80 and risen rapidly to 83, while its rise even to par was predicted; suddenly it faltered, fell off, and then dropped suddenly to 71. Wall Street had never been subjected to a greater shock, and the market reeled to and fro like a drunken man between the blows of these giants, as they hurled about shares by the tens of thousands, and money by the million. The attempted "corner" was a failure, and Drew was victorious, — no doubt existed on that point. The question now was, could Vanderbilt sustain himself? In spite of all his wealth, must he not go down before his cunning opponent? When night put an end to the conflict, Erie stood at 78, the shock of battle was over, and the astonished

brokers drew breath as they waited for the events of the morrow.

The morning of the 11th found the Erie leaders still transacting business at the office of the corporation in West Street. It would seem that these gentlemen, in spite of the glaring contempt for the process of the courts of which they had been guilty, had made no arrangements for an orderly retreat beyond the jurisdiction of the tribunals they had set at defiance. They were speedily roused from their real or affected tranquillity by trustworthy intelligence that processes for contempt were already issued against them, and that their only chance of escape from incarceration lay in precipitate flight. At ten o'clock the astonished police saw a throng of panic-stricken railway directors—looking more like a frightened gang of thieves, disturbed in the division of their plunder, than like the wealthy representatives of a great corporation—rush headlong from the doors of the Erie office, and dash off in the direction of the Jersey ferry. In their hands were packages and files of papers, and their pockets were crammed with assets and securities. One individual bore away with him in a hackney-coach bales containing six millions of dollars in greenbacks. Other members of the board followed under cover of the night; some of them, not daring to expose themselves to the publicity of a ferry, attempted to cross in open boats concealed by the darkness and a March fog. Two directors, who lingered, were arrested; but a majority of the Executive Committee collected at the Erie station in Jersey City, and there, free from any apprehension of Judge Barnard's pursuing wrath, proceeded to the transaction of business.

Meanwhile, on the other side of the river, Vanderbilt was struggling in the toils. As usual in these Wall Street operations, there was a grim humor in the situation. Had Vanderbilt failed to sustain the market, a financial collapse and panic must have ensued which would have sent him to the wall. He had sustained it, and had absorbed a hundred thousand shares of Erie. Thus when Drew retired to Jersey City he carried with him seven millions of his opponent's money, and the Commodore had freely supplied the enemy with the

sinews of war. He had grasped at Erie for his own sake, and now his opponents promised to rehabilitate and vivify the old line with the money he had furnished them, so as more effectually to compete with the lines which he already possessed. Nor was this all. Had they done as they loudly claimed they meant to do, Vanderbilt might have hugged himself in the faith that, after all, it was but a question of time, and the prize would come to him in the end. He, however, knew well enough that the most pressing need of the Erie people was money with which to fight him. With this he had now furnished them abundantly, and he must have felt that no scruples would prevent their use of it.

Vanderbilt had, however, little leisure to devote to the enjoyment of the humorous side of his position. The situation was alarming. His opponents had carried with them in their flight seven millions in currency, which were withdrawn from circulation. An artificial stringency was thus created in Wall Street, and, while money rose, stocks fell, and unusual margins were called in. Vanderbilt was carrying a fearful load, and the least want of confidence, the faintest sign of faltering, might well bring on a crash. He already had a hundred thousand shares of Erie, not one of which he could sell. He was liable at any time to be called upon to carry as much more as his opponents, skilled by long practice in the manufacture of the article, might see fit to produce. Opposed to him were men who scrupled at nothing, and who knew every in and out of the money market. With every look and every gesture anxiously scrutinized, a position more trying than his then was can hardly be conceived. It is not known from what source he drew the vast sums which enabled him to surmount his difficulties with such apparent ease. His nerve, however, stood him in at least as good stead as his financial resources. Like a great general, in the hour of trial he inspired confidence. While fighting for life he could "talk horse" and play whist. The manner in which he then emerged from his troubles, serene and confident, was as extraordinary as the financial resources he commanded. Such a concentration of power in the hands of a single individual is one significant feature of the times.

Meanwhile, before turning to the tide of battle, which now swept away from the courts of law into the halls of legislation, there are two matters to be disposed of; the division of the spoils is to be recounted, and the old and useless lumber of conflict must be cleared away. The division of the profits accruing to Mr. Treasurer Drew and his associate directors, acting as individuals, was a fit conclusion to the stock issue just described. The bonds for five millions, after their conversion, realized nearly four millions of dollars, of which \$3,625,000 passed into the treasury of the company. The trustees of the stockholders had therefore in this case secured a profit for some one of \$375,000. Confidence in the good faith of one's kind is very commendable, but possession is nine points of the law. Mr. Fisk, through whom the sales were mainly effected, declined to make any payments in excess of the \$3,625,000, until a division of profits was agreed upon. It seems that, by virtue of a paper signed by Mr. Drew as early as the 19th of February, Gould, Fisk, and others were entitled to one half the profits he should make "in certain transactions." What these transactions were, or whether the official action of Directors Gould and Fisk was in any way influenced by the signing of this document, does not appear. Mr. Fisk now gave Mr. Drew, in lieu of cash, his uncertified check for the surplus \$375,000 remaining from this transaction, with stock as collateral amounting to about the half of that sum. With this settlement, and the redemption of the collateral, Mr. Drew was fain to be content. Seven months afterwards he still retained possession of the uncertified check, in the payment of which, if presented, he seemed to entertain no great confidence. Everything, however, showed conclusively the advantage of operating from interior lines. While the Erie treasury was once more replete, three of the persons who had been mainly instrumental in filling it had not suffered in the transaction. The treasurer was richer by \$180,000 directly, and he himself only knew by how much more incidentally. In like manner his faithful adjutants had profited to an amount as much exceeding \$60,000 each as their sagacity had led them to provide for.

As to the useless lumber of conflict, consisting chiefly of the numerous judges of the Supreme Court of New York and their

conflicting processes of law, this can be quickly disposed of. Judge Gilbert was soon out of the field. His process had done its work, and the Erie councillors hardly deigned upon the 18th, which was the day fixed for showing cause, to go over to Brooklyn and listen to indignant denunciations on the part of their Vanderbilt brethren, as, with a very halting explanation of his hasty action, Judge Gilbert peremptorily denied the request for further delay, and refused to continue his injunction. It is due to this magistrate to say, that he is one of the most respected in the State of New York; and when that is said, much is implied in the facts already stated as to his opinion of some of his brother judges. Judicial demoralization can go no further. If Judge Gilbert was out of the fray, however, Judge Barnard was not. The wrath and indignation of this curious product of a system of elective judiciary cannot be described, nor was it capable of utterance. It is unnecessary to go into the details of the strange and revolting scenes which the next few months witnessed in his court-room. It reads like some monstrous parody of the forms of law; some Saturnalia of bench and bar. The magistrate became more partisan than were the paid advocates before him, and all seemed to vie with one another in their efforts to bring their common profession into public contempt. Day and night detectives in the pay of suitors dogged the steps of the magistrate, and their sworn affidavits, filed in his own court, sought to implicate him in an attempt to kidnap Drew by means of armed ruffians, and to bring the fugitive by violence within reach of his process. Then, in retaliation, the judge openly avowed from the bench that his spies had penetrated into the consultations of the litigants, and he astonished a witness by angrily interrogating him as to an affidavit reflecting upon himself, to which that witness had declined to make oath.* At one moment he wept, as counsel detailed before him the story of his own grievances and the insults to which he had

* Question by the Court to Mr. Belden: "Did not Mr. Field send you two or three days ago an affidavit filled with gross abuse of me, and you declined to sign it?"

Witness (producing a paper): "This is the affidavit. I said I would rather not sign it."

Question by Mr. Field: "Did you show that affidavit to Judge Barnard?"

been subjected, and then again he vindicated his purity with select specimens of Tammany rhetoric.* When the Vanderbilt counsel moved to fix a day on which their opponents should show cause why a receiver of the proceeds of the last over-issue of stock should not be appointed, the Judge astonished the petitioners by outstripping their eagerness, and appointing Vanderbilt's own son-in-law receiver on the spot. One day Mr. John B. Haskin was placed upon the stand, and there ensued a scene which Barnard himself not inaptly characterized the next day as "outrageous and scandalous, and insulting to the court." Upon this occasion the late Mr. James T. Brady and the witness almost had a personal collision in open court; the purity of the presiding magistrate was impugned, and his venality openly implied through a long cross-examination; and the witness acknowledged that he had, in the course of his career, undertaken for money privately to influence the mind of the judge "on the side of right." All the scandals of the practice of the law, and the private immoralities of lawyers, were dragged into the broad light of day; the whole system of favored counsel, of private argument, of referees, and of unblushing extortion, was freely discussed. On a subsequent day the judge himself made inquiries as to a visit of two of the directors to one gentleman supposed to have peculiar influence over the judicial mind, and evinced great familiarity with the negotiations then carried on.† Nor were the lawyers much behind the judge. At one moment they would indulge in personal wrangling, and accuse each other of the grossest malprac-

Answer: "I did not."

Question: "How then did he learn of its being sent to you?"

Judge Barnard: "He does not know, and never will in this world. I am now doing as other people have been doing; I have been followed by detectives for four or five weeks all over the city, and now I am following others."

* "In this wide city of a million or a million and a half of inhabitants, where a man can be hired for five dollars to swear any man's life away, there is not one so base as to come upon this stand and swear that I had anything to do with any conspiracy."

† Question by the Judge to Mr. Belden: "Do you know whether James Fisk, Jr., and William H. Marston went in a carriage to John J. Crane's house and offered him \$50,000 to vacate this injunction; and did you hear from a director of the Erie Railroad that the Executive Committee had allowed that sum to be paid?"

Answer: "No one of the directors told me this; but I think I heard something of the kind. I can't tell from whom I heard it; there were numerous reports flying about at the time."

tice ; the next, they would dare any one to enter an order just granted by the court, and threaten the presiding justice with impeachment. All this time injunctions were flying about like hailstones ; but the crowning injunction of all was one issued by Judge Clerke, a colleague of Judge Barnard, at the time sitting as a member of the Court of Appeals at Albany, in reference to the appointment of a receiver. The Gilbert injunction had gone, it might have seemed, sufficiently far, in enjoining Barnard the individual, while distinctly disavowing all reference to him in his judicial functions. Judge Clerke made no such exception. He enjoined the individual and he enjoined the judge ; he forbade his making any order appointing a receiver, and he forbade the clerks of his court from entering it if it were made, and the receiver from accepting it if it were entered. This extraordinary order, the signing of which by any judge in his senses admits of no explanation, the Erie counsel served upon Judge Barnard as he sat upon the bench, and, having done so, withdrew from the court-room ; whereupon the judge immediately proceeded to vacate the order, and to appoint a receiver. This appointment was then entered by a clerk, who had also been enjoined, and the receiver was himself enjoined as soon as he could be caught. Finally the maze had become so intricate, and the whole litigation so evidently endless and aimless, that, by a sort of agreement of parties, Judge Ingraham, another colleague of Judge Barnard, issued a final injunction of universal application, as it were, and to be held inviolable by common consent, under which proceedings were stayed, pending an appeal. It was high time. Judges were becoming very shy of anything connected with the name of Erie, and Judge McCunn had in a lofty tone informed counsel that he preferred to subject himself to the liability of a fine of a thousand dollars rather than, by issuing a writ of *habeas corpus*, to allow his court "to have anything to do with the scandal."

The result of this extraordinary litigation may be summed up in a few words. It had two branches : one, the appointment of a receiver of the proceeds of the hundred thousand shares of stock issued in violation of an injunction ; the other, the processes against the persons of the directors for a contempt of

court. As for the receiver, every dollar of the money this officer was intended to receive was well known to be in New Jersey, beyond his reach. Why one party cared to insist on the appointment, or why the other party objected to it, is not very apparent. Mr. Osgood, the son-in-law of Vanderbilt, was appointed, and immediately enjoined from acting; subsequently he resigned, when Mr. Peter B. Sweeney, the head of the Tammany ring, was appointed in his place, without notice to the other side. Of course he had nothing to do, as there was nothing to be done, so he was subsequently allowed by Judge Barnard \$150,000 for his services. The contempt cases had even less result than that of the receivership. The settlement subsequently effected between the litigants seemed also to include the courts. The outraged majesty of the law, as represented in the person of Mr. Justice Barnard, was pacified, and everything was explained as having been said and done in a "Pickwickian sense"; so that, when the terms of peace had been arranged between the high contending parties, Barnard's rage by degrees subsided, until at last he ceased to rage at all. The penalty for violating an injunction in the manner described was finally fixed at the not unreasonable sum of ten dollars, except in the cases of Mr. Drew and certain of his more prominent associates; their contumacy his Honor held to be too great to be estimated in money, and so they escaped without any punishment at all. The legal profession alone had cause to regret the cessation of this litigation; and as the Erie counsel had \$150,000 divided among them in fees, it may be presumed that even they were finally comforted.

It is now necessary to return to the real field of operations, which had ceased on the morning of the 11th of March to be in the courts of law. As the theatre widened, the proceedings became more complicated and more difficult to trace, embracing as they did the legislatures of two States, neither of them famed for purity. In the first shock of the catastrophe it was actually believed that Commodore Vanderbilt contemplated a resort to open violence and acts of private war. There were intimations that a scheme had been matured for kidnapping certain of the Erie directors, including Mr.

Drew, and bringing them by force within reach of Judge Barnard's process. It appeared that on the 16th of March some fifty individuals, subsequently described, in an affidavit filed for the special benefit of Mr. Justice Barnard, as "disorderly characters, commonly known as roughs," crossed by the Pavonia Ferry and took possession of the Erie depot. From their conversation and inquiries it was divined that they came intending to "copp" Mr. Drew, or, in plainer phraseology, to take him by force to New York, and expected to receive the sum of \$50,000 as a reward for so doing. The exiles at once loudly charged Vanderbilt himself with originating this blundering scheme. They simulated intense alarm. From day to day new panics were started, until, on the 19th, Drew was secreted, a standing army was organized from the employees of the road, and a small navy equipped. The alarm spread through Jersey City; the militia was held in readiness; in the evening the stores were closed and the citizens began to arm; while a garrison of about a hundred and twenty-five men intrenched themselves around the directors, in their hotel. On the 21st there was another alarm, and the fears of an attack continued, with lengthening intervals of quiet, until the 31st, when the guard was at last withdrawn. It is impossible to suppose that Vanderbilt ever had any knowledge of this ridiculous episode or of its cause, except through the press. A band of ruffians may have crossed the ferry, intending to kidnap Drew on speculation; but to suppose that the shrewd and energetic Commodore ever sent them over to go gaping about a station, ignorant both of the person and the whereabouts of him they were in search of, would be to impute to Vanderbilt at once a crime and a blunder. Such botching bears no trace of his clean handiwork.

The first serious effort of the Erie party was to intrench itself in New Jersey; and here it met with no opposition. A bill making the Erie Railway Company a corporation of New Jersey, with the same powers they enjoyed in New York, was hurried through the legislature in the space of two hours, and, after a little delay, signed by the Governor; and the astonished citizens of the latter State saw their famous broad-gauge road metamorphosed before their eyes into a denizen

of the kingdom of Camden and Amboy. Here was another dreadful hint to Wall Street. What further issues of stock might become legal under this charter, how the tenure of office of the present Board of Directors might be altered, what curious legal complications might arise, were questions more easily put than satisfactorily answered. The region of possibilities at any rate was considerably extended. The new act of incorporation, however, was but a precaution to secure for the directors of the Erie a retreat in case of need ; the real field of conflict lay in the legislature of New York, and here Vanderbilt was first on the ground.

The corruption ingrained in the political system of New York City is supposed to have been steadily creeping into the legislature at Albany during several years past. The press has rung with charges of venality against members of this body ; individuals have been pointed out as the recipients of large sums ; men have certainly become rich during short terms in office ; and, of all the rings which influence New York legislation, the railroad ring is currently supposed to be the most corrupt and corrupting. The mind of the unprejudiced inquirer, who really desires to ascertain the truth on this subject, will probably pass through several phases of belief before settling down into conviction. In the first place, he will be overwhelmed by the broad, sweeping charges advanced in the columns of the press by responsible editors and well-informed correspondents. He will read with astonishment that legislation is controlled by cliques and is openly bought and sold ; that the lobby is but the legislative brokers' board, where votes are daily quoted ; that sheep and bullocks are not more regularly in the market at Smithfield than Assemblymen and Senators at Albany. Amazed by such statements, the inquirer becomes incredulous, and demands evidence in support of them. This is never forthcoming. Committees of investigation — one or two in a session — are regularly appointed, and their reports are invariably calculated to confound the existing confusion. These committees generally express a belief in the existence of corruption and an utter inability to find it out ; against some notoriously venal brother legislator they enter a Scotch verdict of " not proven " ; and, having so far

been very guarded in their language, they then launch forth into tremendous denunciations of an unbridled and irresponsible press. Here they have it all their own way, and too often make out an excellent case. Meanwhile the seeker after truth leaves both correspondents and committees, and tries to reach a conclusion by other means. Public rumor he finds to be merely a reflection of the press, or itself the impalpable form which the press reflects. No conviction can be had on such evidence. He finds loose statements, unproved assertions, and unsustained charges, tending to produce general incredulity. Where so much more is alleged than is proved, nothing is finally believed; until individual corruption may be almost measured by an ostentatious disregard of public opinion. Passing through the phase of incredulity, the inquirer may at last resort to the private judgment of the best informed. Appealing to individuals in whose purity, judicial temper, and means of information he has entire confidence, he will probably find his conclusions as discouraging as they are inevitable. The weight of opinion and of evidence gradually becomes irresistible, until his mind settles down into a sad belief that probably no representative bodies were ever more thoroughly venal, more shamelessly corrupt, or more hopelessly beyond the reach of public opinion than are certain of those bodies which legislate for republican America in this latter half of the nineteenth century. Certainly, none of the developments which marked the Erie conflict in the New York legislature of 1868 would tend to throw doubts on this conclusion when once arrived at.

One favorite method of procedure at Albany is through the appointment of committees to investigate the affairs of wealthy corporations. The stock of some great company is manipulated till it fluctuates violently, as was the case with Pacific Mail in 1867. Forthwith some member of the Assembly rises and calls for a committee of investigation. The instant the game is afoot, a rush is made for positions on the committee. The proposer, of course, is a member, probably chairman. The advantages of the position are obvious. The committee constitutes a little temporary outside ring. If a member is corrupt, he has substantial advantages offered

him to influence his action in regard to the report. If he is not open to bribery, he is nevertheless in possession of very valuable information, and an innocent little remark, casually let fall, may lead a son, a brother, or a loving cousin to make very judicious purchases of stock. Altogether, the position is one not to be avoided.

The investigation phase was the first which the Erie struggle assumed at Albany. During the early stages of the conflict, the legislature had scented the carnage from afar. There was "money in it," and the struggle was watched with breathless interest. As early as the 5th of March the subject had been introduced into the State Senate, and an investigation into the circumstances of the company called for. A committee of three was ordered, but the next day a Senator, by name Mattoon, moved to increase the number to five, which was done, he himself being naturally one of the additional members. This committee had its first sitting on the 10th, at the very crisis of the great explosion. But before the investigation was entered upon, Mr. Mattoon thought it expedient to convince the contending parties of his own perfect impartiality and firm determination to hold in check the corrupt impulses of his associates. With this end in view, upon the 9th or the 10th he hurried down to New York, and visited West Street, where he had an interview with the leading Erie directors. He explained to them the corrupt motives which had led to the appointment of the committee, and how his sole object in obtaining an increase of the number had been to put himself in a position in which he might be able to prevent these evil practices and see fair play. Curiously enough, at the same interview, he mentioned that his son was to be appointed an assistant sergeant-at-arms to aid in the investigation, and proved his disinterestedness by mentioning the fact that this son was to serve without pay. The labors of the committee continued until the 31st of March, and during that time Mr. Mattoon, and at least one other Senator, pursued a course of private inquiry which involved further visits to Jersey City. Naturally enough, Mr. Drew and his associates took it into their heads that the man wanted to be bought, and even affirmed subsequently that, at

one interview, he had in pretty broad terms offered himself for sale. It has not been distinctly stated in evidence by any one that an attempt was made on his purity or on that of his public-spirited son; and it is difficult to believe that one who came to New York so full of high purpose could have been sufficiently corrupted by metropolitan influences to receive bribes from both sides. Perhaps improper overtures were made to him, and his indignation thereat influenced his final action in regard to the report of the committee. On the 31st, it seems, the draft of a proposed report, exonerating in great measure the Drew faction, was read to him by an associate, to which he not only made no objection, but which he was even understood to approve. On the same day another report was read in his presence strongly denouncing the Drew faction, sustaining to the fullest extent the charges made against it, and characterizing its conduct as corrupt and disgraceful. Each report was signed by two of his associates, and Mr. Mattoon found himself in the position of holding the balance of power; whichever report he signed would be the report of the committee. To a man of Mr. Mattoon's conscious probity such a position must have been one of terrible responsibility. He expressed a desire to think the matter over. It is natural to suppose, that in his eagerness privately to gain information, Mr. Mattoon had not confined his unofficial visits to the Drew camp. At any rate, his mind was in a state of painful suspense. Throwing the theory of double bribery aside, as unsustained by direct evidence, the other theory, that of offended virtue, will alone account for the fact, that, after arranging in consultation on Tuesday for a report favoring the Drew party, on Wednesday he signed a report strongly denouncing it, and, by so doing, settled the action of the committee. Mr. Jay Gould must have been acquainted with the circumstances of the case, and evidently supposed that Mr. Mattoon was "fixed," as he subsequently declared that he was "astounded" when he heard that Mr. Mattoon had signed this report. However, the committee, with their patriotic sergeant-at-arms, whose services, by the way, cost the State but a hundred dollars, desisted at length from their labors, the result of which was one more point gained by Commodore Vanderbilt.

Indeed Vanderbilt had thus far as much outgeneralled Drew in the manufacture of public opinion, as Drew had outgeneralled Vanderbilt in the manufacture of Erie stock. His whole scheme was one of monopoly, which was opposed to every interest of the city and State of New York, yet into the support of this scheme he had brought every leading paper of New York City, with a single exception. Now again he seemed to have it all his own way in the legislature, and the tide ran strongly against the exiles of Erie. The report of the investigation committee was signed on April 1st, and may be considered as marking the high-water point of Vanderbilt's success. Hitherto the Albany interests of the exiles had been confided to mere agents, and had not prospered; but when fairly roused by a sense of danger, the Drew party showed at least as great a familiarity with the tactics of Albany as with those of Wall Street. The moment they felt themselves settled at Jersey City they had gone to work to excite a popular sympathy in their own behalf. The cry of monopoly was a sure card in their hands. They cared no more for the actual welfare of commerce, involved in railroad competition, than they did for the real interests of the Erie Railway; but they judged truly that there was no limit to the extent to which the public might be imposed upon. An active competition with the Vanderbilt roads, by land and water, was inaugurated; fares and freights on the Erie were reduced on an average by one third; sounding proclamations were issued; "inter-viewers" from the press returned rejoicing from Taylor's Hotel to New York City, and the Jersey shore quaked under the clatter of this Chinese battle. The influence of these tactics made itself felt at once. By the middle of March memorials against monopoly began to flow in at Albany.

While popular sympathy was thus roused by the bribe of active competition, a bill was introduced into the Assembly, in the Erie interest, legalizing the recent issue of new stock, declaring and regulating the power of issuing convertible bonds, providing for a broad-gauge connection with Chicago and the guarantee of the bonds of the Boston, Hartford, and Erie, and finally forbidding, in so far as any legislation could, the consolidation of the Central and the Erie in the hands of Van-

derbilt. This bill was referred to the Committee on Railroads on the 13th of March, and on the 20th a public hearing upon it was begun, and the committee proceeded to take evidence, aided by a long array of opposing counsel, most of whom had figured in the proceedings in the courts of law. In a few days the bill was adversely reported upon, and the report adopted in the Assembly by the decisive vote of eighty-three to thirty-two. This was upon the 27th of March. The hint was a broad one; the exiles must give closer attention to their interests. As soon as the news of this adverse action reached Jersey City, it was decided that Mr. Jay Gould should brave the terrors of the law, and personally superintend matters at Albany. Neither Mr. Drew nor his associates desired to become permanent residents of Jersey City; nor did they wish to return to New York as criminals on their way to jail. Mr. Gould was to pave the way to a different return by getting the recent issue of convertible bonds legalized. That once done, Commodore Vanderbilt was not the man to wage an unavailing war, and a compromise, in which Barnard and his processes of contempt would be thrown in as a makeweight, could easily be effected. A rumor was therefore started that Mr. Gould was to leave for Ohio, supplied with the necessary authority and funds to press vigorously to completion the eighty miles of broad-gauge track between Akron and Toledo, which would open to the Erie the much-coveted connection with Chicago. Having hung out this false light, Mr. Jay Gould went on his mission, the president of the company having sometime previously drawn half a million of dollars out of the overflowing Erie treasury.

This mission was by no means unattended by difficulties. In the first place, Judge Barnard's processes for contempt seemed to threaten the liberty of Mr. Gould's person. He left Jersey City and arrived at Albany on the 30th day of March, three days after the defeat of the Erie bill, and two days before Mr. Mattoon had made up his mind as to which report he would sign. Naturally his opponents were well satisfied with the present aspect of affairs, and saw no benefit likely to arise from Mr. Gould's presence in Albany. The day after his arrival, therefore, he was arrested, on the writ issued against

him for contempt of court, and held to bail in half a million of dollars for his appearance in New York on the following Saturday. He was immediately bailed of course, and for the next few days devoted himself assiduously to the business he had in hand. On Saturday he appeared before Judge Barnard, and was duly put in charge of the sheriff to answer certain interrogatories. It would seem to have been perfectly easy for him to have given the necessary bail, and to have returned from Barnard's presence at once to Albany; but the simple method seems never to have been resorted to throughout these complications: nothing was ever done without the interposition of a writ and the assistance of a crowd of counsel. In this case Judge Barrett of the Common Pleas was appealed to, who issued a writ of *habeas corpus*, by virtue of which Mr. Gould was taken out of the hands of the sheriff and again brought into court. Of course the hearing in the case was deferred, and it was equally a matter of course that Mr. Gould was bent on at once returning to his field of labor. The officer to whose care Mr. Gould was intrusted was especially warned by the court, in Mr. Gould's presence, that he was not to allow his charge to go out of his sight. This difficulty was easily surmounted. Mr. Gould went by an early train to Albany, taking the officer with him in the capacity of a travelling companion. Once in Albany, he was naturally taken ill,—not too ill to go to the Capitol in the midst of a snow-storm, but much too ill to think of returning to New York. On the 10th the trusty official and travelling companion signified to Mr. Gould that his presence was much desired before Judge Barrett, and intimated an intention of carrying him back to New York. Mr. Gould then pleaded the delicate condition of his health, and wholly declined to undergo the hardships of the proposed journey. Whereupon the officer, stimulated, as was alleged, by Gould's opponents, returned alone to New York, and reported his charge to the court as a runaway. A new spectacle of judicial indignation ensued, and a new process for contempt seemed imminent. Of course nothing came of it. A few affidavits from Albany pacified the indignant Barrett. The application for a *habeas corpus* was discharged, and Mr. Gould was theoretically returned into the custody of the sheriff.

Thereupon the required security for his appearance when needed was given; and meanwhile, pending the recovery of his health, he assiduously devoted the tedious hours of convalescence to the task of cultivating a thorough understanding between himself and the members of the legislature.

A strange legislative episode occurred at this time, which threatened for a day or two to thwart Mr. Gould's operations, but in the end materially facilitated them. All through March the usual sensational charges had been flying through the press in relation to the buying of votes on the pending Erie measures. These were as vague and as difficult to sustain as usual, and it was very important that no indiscreet friend of legislative purity should blunder out charges which could be triumphantly refuted. On the 1st of April, however, the second day after Mr. Gould appeared on the ground, a quiet, country member named Glenn, remarkable for nothing but his advanced years and white hair, suddenly created an intense sensation by rising in his place in the Assembly and excitedly declaring that he had just been offered money for his vote on the Erie bill. He then sent up to the Speaker charges in writing, to the effect that the recent report on the rejected Erie bill was bought, that members of the house were engaged in purchasing votes, that reports of committees were habitually sold, and ended by charging "corruption, deep, dark, and damning on a portion of the house," of which he felt "degraded in being a member." A committee of investigation was, of course, appointed, and the press congratulated the public that at last specific charges had been advanced from a responsible quarter. On the 9th, Mr. Glenn followed up the attack by charging, again in writing, that one member of the committee of investigation, whose name he gave, was the very member who had offered him money for his vote. Mr. Frear, the member in question, at once resigned his place upon the committee, and demanded an investigation. Then it turned out that the simple old gentleman, between his desire for notoriety and his eagerness to expose corruption, had been made the victim of a cruel joke. Some waggish colleagues had pointed out to him an itinerant Jew, who haunted the lobby and sold spectacles, as an agent of the fourth estate. From him the old gentleman had, after

some clumsy angling and many leading questions, procured what he supposed to be an offer of money for his vote, which, by a ludicrous misunderstanding, managed by his humorous colleagues, was made to appear in his eyes as having received Mr. Frear's indorsement. Mr. Glenn's charges ended, therefore, in a ridiculous fiasco, and in a tremendous outburst of offended legislative virtue. The committee reported on the 10th; every one was exonerated; Mr. Glenn was brought to the bar and censured, and the next day he resigned. As for the astonished pedler, he was banished from the lobby, imprisoned and prosecuted. The display of indignation on the part of Mr. Glenn's brother legislators was, in view of the manifest absurdity of the whole affair, somewhat superfluous and somewhat suspicious; but one such false accusation protects a multitude of real sins. The trade of censor of morals fell into disrepute at Albany; and, under the shadow of this parody upon exposures of corruption, Mr. Gould was at liberty to devote himself to serious business without fear of interruption.

The full and true history of this legislative campaign will never be known. If the official reports of investigating committees are to be believed, Mr. Gould at about this time underwent a curious psychological metamorphosis, and suddenly became the veriest simpleton in money matters that ever fell into the hands of happy sharpers. Cunning lobby members had but to pretend to an influence over legislative minds, which every one knew they did not possess, to draw unlimited amounts from this verdant *habitué* of Wall Street. It seemed strange that he could have lived so long and learned so little. He dealt in large sums. He gave to one man, in whom he said "he did not take much stock," the sum of \$5,000, "just to smooth him over." This man had just before received \$5,000 of Erie money from another agent of the company. It would therefore be interesting to know what sums Mr. Gould paid to those individuals in whom he did "take much stock." Another individual is reported to have received \$100,000 from one side, "to influence legislation," and to have subsequently received \$70,000 from the other side to disappear with the money; which he accordingly did, and thereafter became a gentleman of elegant leisure. One Senator was openly charged in the col-

umns of the press with receiving a bribe of \$20,000 from one side, and a second bribe of \$15,000 from the other; but Mr. Gould's foggy mental condition only enabled him to be "perfectly astounded" at the action of this Senator, though he knew nothing of any such transactions. Other Senators were blessed with a sudden accession of wealth, but in no case was there any jot or tittle of proof of bribery. Mr. Gould's rooms at the Develin House overflowed with a joyous company, and his checks were numerous and heavy; but why he signed them, or what became of them, he seemed to know less than any man in Albany. This strange and expensive hallucination lasted until about the middle of April, when Mr. Gould was happily restored to his normal condition of a shrewd, acute, energetic man of business; nor is it known that he has since experienced any relapse into financial idiocy.

About the period of Mr. Gould's arrival in Albany the tide turned, and soon began to flow strongly in favor of Erie and against Vanderbilt. How much of this was due to the skilful manipulations of Gould, and how much to the rising popular feeling against the practical consolidation of competing lines, cannot be decided. The popular protests did indeed pour in by scores, but then again the Erie secret-service money poured out like water. Yet Mr. Gould's task was sufficiently difficult. After the adverse report of the Senate committee, and the decisive defeat of the bill introduced into the Assembly, any favorable legislation seemed almost hopeless. Both houses were committed. Vanderbilt had but to prevent action, to keep things where they were, and the return of his opponents to New York was impracticable, unless with his consent; he appeared, in fact, to be absolute master of the situation. It seemed almost impossible to introduce a bill in the face of his great influence, and to navigate it through the many stages of legislative action and executive approval, without somewhere giving him an opportunity to defeat it. This was the task Gould had before him, and he accomplished it. On the 13th of April a bill, which met the approval of the Erie party, and which Judge Barnard subsequently compared not inaptly to a bill legalizing counterfeit money, was taken up in the Senate; for some days it was warmly debated, and on the 18th

was passed by the decisive vote of seventeen to twelve. Senator Mattoon had not listened to the debate in vain. Perhaps his reason was convinced, perhaps the first anger of offended virtue had subsided ; at any rate that incorruptible Senator was found voting with the majority. The bill practically legalized the recent issues of bonds, but made it a felony to use the proceeds of the sale of these bonds except for completing, furthering, and operating the road. The guaranty of the bonds of connecting roads was authorized, all contracts for consolidation or division of receipts between the Erie and the Vanderbilt roads were forbidden, and a clumsy provision was enacted that no stockholder, director, or officer in one of the Vanderbilt roads should be an officer or director in the Erie, and *vice versa*. The bill was, in fact, an amended copy of the one voted down so decisively in the Assembly a few days before, and it was in this body that the tug of war was expected to come.

The lobby was now full of animation ; fabulous stories were told of the amounts which the contending parties were willing to expend ; never before had the market quotations of votes and influence stood so high. The wealth of Vanderbilt seemed pitted against the Erie treasury, and the vultures flocked to Albany from every part of the State. Suddenly, at the very last moment, and even while special trains were bringing up fresh contestants to take part in the fray, a rumor ran through Albany as of some great public disaster, spreading panic and terror through hotel and corridor. The observer was reminded of the dark days of the war, when tidings came of some great defeat, as that on the Chickahominy or at Fredericksburg. In a moment the lobby was smitten with despair, and the cheeks of the legislators were blanched, for it was reported that Vanderbilt had withdrawn his opposition to the bill. The report was true. Either the Commodore had counted the cost and judged it excessive, or he despaired of the result. At any rate, he had yielded in advance. In a few moments the long struggle was over, and that bill which, in an unamended form, had but a few days before been thrown out of the Assembly by a vote of eighty-three to thirty-two, now passed it by a vote of one hundred and one to six, and was sent to the Governor for his signature. Then the wrath of the disappointed members

turned on Vanderbilt. Decency was forgotten in a frenzied sense of disappointed avarice. That same night the *pro rata* freight bill, and a bill compelling the sale of through tickets by competing lines, were hurriedly passed, simply because they were thought hurtful to Vanderbilt; and the docket was ransacked in search of other measures calculated to injure or annoy him. An adjournment, however, brought reflection, and subsequently, on this subject, the legislature stultified itself no more.

The bill had passed the legislature; would it receive the Executive signature? Here was the last stage of danger. For some time doubts were entertained on this point, and the last real conflict between the opposing interests took place in the Executive Chamber at Albany. There, on the afternoon of the 21st of April, Commodore Vanderbilt's counsel appeared before Governor Fenton, and urged upon him their reasons why the bill should be returned by him to the Senate without his signature. The arguments were patiently listened to, but, when they had closed, the Executive signature placed the seal of success upon Mr. Gould's labors at Albany. Even here the voice of calumny was not silent. As if this remarkable controversy was destined to leave a dark blot of suspicion upon every department of the civil service of New York, there were not wanting those who charged the Executive itself with the crowning act in this history of corruption. The very sum which had been paid, as it was pretended, was named; the broker of Executive action was pointed out, and the number of minutes was specified which should intervene between the payment of the bribe and the signing of the law.*

Practically, the conflict was now over, and the period of negotiation had already begun. The combat in the courts was indeed kept up until far into May, for the angry passions of the lawyers and of the judges required time in which to wear themselves out. Day after day the columns of the press revealed fresh scandals to the astonished public, which at last grew in-

* It is but justice to Governor Fenton to say that, though this charge was boldly advanced by respectable journals of his own party, it cannot be considered as sustained by the evidence. The testimony on the point will be found in the report of Senator Hale's investigating committee. Documents (Senate), 1869, No. 52, pp. 146-148, 151-155.

diferent to such revelations. Beneath all the wrangling of the courts, however, while the popular attention was distracted by the clatter of lawyers' tongues, the leaders in the controversy were quietly progressing towards a settlement. In the early days of his exile Mr. Drew had been more depressed in spirit, more vacillating in council, than his younger and more robust associates. The publicity and excitement which had sustained and even amused them had wearied and annoyed the old man. His mind had been oppressed with doubts and tormented by officious advisers. Stronger wills than his were bearing him along with them; and though, perhaps, not more scrupulous than those about him, he was certainly less bold. He missed also his home comforts; he felt himself a prisoner in everything but in name; he knew that he was distrusted, and his every action watched by associates of whom he even stood in physical fear. After the first week or two, and as affairs began to assume a less untoward aspect, his spirits revived, and he soon began to make secret advances towards his angry opponent. The hostilities of the Stock Exchange are proverbially short-lived. A broker skilled in the ways of his kind, in his evidence in one of these proceedings, assigned five minutes as the utmost period during which it was safe to count on the enmities or alliances of leading operators. Early in April Mr. Drew took advantage of that blessed immunity from arrest which the Sabbath confers on the hunted of the law, to revisit the familiar scenes across the river. His visits soon resulted in conferences between himself and Vanderbilt, and these conferences naturally led to overtures of peace. Though the tide was turning against the great railroad king, though an uncontrollable popular feeling was fast bearing down his schemes of monopoly, yet he was by no means beaten or subdued. His plans, however, had evidently failed for the present. It was now clearly his interest to abandon his late line of attack, and to bide his time patiently, or to possess himself of his prey by some other method. The wishes of all parties, therefore, were fixed on a settlement, and no one was disposed to stand out except in order to obtain better terms. The interests, however, were multifarious. There were four parties to be taken care of, and the depleted treasury of the Erie Railway was doomed to suffer.

The details of this masterpiece of Wall Street diplomacy have never come to light, but Mr. Drew's visits to New York became more frequent and less guarded, and, by the middle of April, he had appeared in Broad Street on a week-day, undisturbed by fears of arrest, and soon rumors began to spread of misunderstandings between himself and his brother exiles. It was said that his continual absences alarmed them, that they distrusted him, that his terms of settlement were not theirs. It was even asserted that his orders on the treasury were no longer honored, and that he had, in fact, ceased to be a power in Erie. Whatever truth there may have been in these rumors, it was very evident his associates had no inclination to trust themselves within the reach of the New York courts until a definitive treaty, satisfactory to themselves, was signed and sealed. This probably took place in the neighborhood of April 25th; for on that day the Erie camp at "Fort Taylor," as their uninviting hotel had been dubbed, was broken up, the President and one of the Executive Committee took steamer for Boston, and the other directors appeared before Judge Barnard, prepared to purge themselves of their contempt.

The details of the treaty which had been concluded between the high contracting parties were not divulged to the Board of Directors until the 2d of July. Upon that day Mr. Eldridge announced the following terms of settlement: Commodore Vanderbilt was to be relieved of fifty thousand shares of Erie stock at 70, receiving therefore \$2,500,000 in cash, and \$1,250,000 in bonds of the Boston, Hartford, and Erie at 80. He was also to receive a further sum of \$1,000,000 outright, as a consideration for the privilege the Erie Road thus purchased of calling upon him for his remaining fifty thousand shares at 70 at any time within four months. He was also to have two seats in the Board of Directors, and all suits were to be dismissed and offences condoned. All the Vanderbilt proceedings had, however, been conducted in the names of other persons, who were by no means disposed to see themselves ignored in the final adjustment. The sum of \$429,250 was fixed upon as a proper amount to assuage the sense of wrong from which these gentlemen suffered, and to efface from their memories all recollection of the unfortunate "pool" of the previous December. Why

the owners of the Erie Railway should have paid this indemnity of \$4,000,000 is not very clear. The operations were apparently outside of the business of a railway company, and no more connected with the stockholders of the Erie than were the butchers' bills of the individual directors.

While Vanderbilt and his friends were thus provided for, Mr. Drew was to be left in undisturbed enjoyment of the fruits of his recent operations, but was to pay into the treasury \$540,000 and interest, in full discharge of all claims and causes of action which the Erie Company might have against him. The Boston party, as represented by Mr. Eldridge, was to be relieved of \$5,000,000 of their Boston, Hartford, and Erie bonds, for which they were to receive \$4,000,000 of Erie acceptances. None of these parties, therefore, had anything to complain of, whatever might be the sensations of the real owners of the railway. A total amount of some \$9,000,000 in cash was drawn from the treasury in fulfilment of this *settlement*, as the persons concerned were pleased to term this remarkable disposition of property intrusted to their care.

Messrs. Gould and Fisk still remained to be provided for, and to them their associates left — the Erie Railway. These gentlemen subsequently maintained that they had vehemently opposed this settlement, and had denounced it in the secret councils as a fraud and an outrage. This would seem in no way improbable. The rind of the orange is not generally considered the richest part of the fruit; a corporation on the verge of bankruptcy is less coveted, even by operators in Wall Street, than one rich in valuable assets. However, the voice of a clear majority was for peace. Mr. Eldridge counted out his bonds and received his acceptances, which latter were cashed at once to close up the transaction, and thereupon he resigned his positions as director and president. The Boston raiders then retired, heavy with spoil, into their own North country, where, doubtless, in good time, they will introduce the more highly developed civilization of the land of their temporary adoption. Mr. Vanderbilt apparently ceased to concern himself with Erie; and Daniel Drew, released from the anxieties of office, assumed for a space the novel character of a disinterested observer of the operations of Wall Street.

Thus, in the early days of July, Messrs. Fisk and Gould found themselves beginning life, as it were, in absolute control of the Erie Railway, but with an empty treasury and a doubtful reputation. Outwardly things did not look unpromising. The legal complications were settled, and the fearful load imposed by the settlements upon the already over-burdened resources of the road was not, of course, imparted to the public. It is unnecessary to add that the "outside" holders of the stock were, in the counsels of the managers, included in that public the inquiries of which in regard to the affairs of the company were looked upon by the ring in control as downright impertinence. A calm — a deceitful one indeed, but yet a calm — succeeded the severe agitations of the money market. All through the month of July money was easy and ruled at three or four per cent; Erie was consequently high, and was quoted at about 70, which enabled the company to dispose without loss of the Vanderbilt stock. It may well be believed that Messrs. Fisk and Gould could not have regarded their empty treasury, just depleted to the extent of nine millions, — trust funds misapplied by directors in the processes of stock-gambling, — without serious question as to their ability to save the road from bankruptcy. The October election was approaching, Vanderbilt was still a threatening element in the future, and new combinations might arise. Millions were necessary, and must at once be forthcoming. The new officials were, however, men of resources and were not men of many scruples. The money must be raised, and recent experience indicated a method of raising it. Their policy, freed from the influence of Drew's vacillating, treacherous, and withal timid nature, could now be bold and direct. The pretence of resistance to monopoly would always serve them, as it had served them before, as a plausible and popular cry. Above all, their councils were now free from interlopers and spies, for the first act of Messrs. Gould and Fisk had been to do away with the old board of auditors, and to concentrate all power in their own hands as president, treasurer, and controller. Fortunately for them it was midsummer, and the receipts of the road were very heavy, supplying them with large sums of ready money; most fortunately for them, also, a strange infatuation at this time took possession of the English mind.

Shrewd as the British capitalist proverbially is, his judgment in regard to American investments has been singularly fallible. When our national bonds went begging at a discount of sixty per cent, he transmitted them to Germany and refused to touch them himself. At the very same time a plausible type of the American railroad financier—a man the history of whose career would read like the tale of an Arabian night—was involving the whole Royal Exchange in wild and unlimited investments in a Western bubble road. To the British bankers who had apparently rushed from the extreme of caution to the extreme of confidence, even the crash of May, 1866, did not seem to teach wisdom. They now, after all the exposures of the preceding months, apparently because it seemed cheap, rushed into Erie, and the prices in New York were sustained by the steady demand for stock on foreign account. Not only did this curious infatuation, involving purchases to the extent of a hundred thousand shares, cover up the operations of the new ring, but, at a later period, the date of the possible return of this stock to Wall Street was the hinge on which the success of their culminating plot was made to turn.

The appearance of calm lasted but about thirty days. Early in August it was evident that something was going on. Erie fell suddenly ten per cent; in a few days more it experienced a further fall of seven per cent, touching 44 by the 19th of the month, upon which day, to the astonishment of Wall Street, the transfer books of the company were closed preparatory to the annual election. As this election was not to take place until the 13th of October, and as the books had thus been closed thirty days in advance of the usual time, it looked very much as though the managers were satisfied with the present disposition of the stock, and meant, by keeping it where it was, to preclude any such unpleasantness as an opposition ticket. The courts and a renewed war of injunctions were of course open to any contestants, including Commodore Vanderbilt, who desired to avail themselves of them; probably, however, the memory of recent struggles was too recent to induce any one to embark on those treacherous waters. At any rate nothing of the sort was attempted. The election took place at the usual time, and the ring in control voted themselves without

opposition into a new lease of power. Two new names had meanwhile appeared in the list of Erie directors, those of Peter B. Sweeney and William M. Tweed. The construction of the new board may be stated in a few words, and calls for no comment. It consisted of the Erie ring and the Tammany ring, brought together in close political and financial alliance; and, for the rest, a working majority of supple tools and a hopeless minority of respectable figure-heads. This formidable combination shot out its feelers far and wide; it wielded the influence of a great corporation with a capital of a hundred millions; it controlled the politics of the first city of the New World; it sent its representatives to the Senate of the State, and numbered among its agents the judges of the courts. Compact, disciplined, and reckless, it knew its own power and would not scruple to use it.

It was now the month of October, and the harvest had been gathered. The ring and its allies determined to reap their harvest also, and that harvest was to be nothing less than a contribution levied, not only upon Wall Street and New York, but upon all the immense interests, commercial and financial, which radiate from New York all over the country. Like the Cæsar of old, they issued their edict that all the world should be taxed. The process was not novel, but it was effective. A monetary stringency may be looked for in New York at certain seasons of every year. It is generally most severe in the autumn months, when the crops have to be moved, and the currency drains steadily away from the financial centre towards the extremities of the system. The method by which an artificial stringency is produced is thus explained in a recent report of the Comptroller of the Currency: "It is scarcely possible to avoid the inference that nearly one half of the available resources of the national banks in the city of New York are used in the operations of the stock and gold exchange; that they are loaned upon the security of stocks which are bought and sold largely on speculation, and which are manipulated by cliques and combinations, according as the bulls or bears are for the moment in the ascendancy. . . . Taking advantage of an active demand for money to move the crops West and South, shrewd opera-

tors form their combination to depress the market by 'locking up' money, — withdrawing all they can control or borrow from the common fund; money becomes scarce, the rate of interest advances, and stocks decline. The legitimate demand for money continues; and, fearful of trenching on their reserve, the banks are strained for means. They dare not call in their demand loans, for that would compel their customers to sell securities on a falling market, which would make matters worse. Habitually lending their means to the utmost limit of prudence, and their credit much beyond that limit, to brokers and speculators, they are powerless to afford relief; — their customers by the force of circumstances become their masters. The banks cannot hold back or withdraw from the dilemma in which their mode of doing business has placed them. They must carry the load to save their margins. A panic which should greatly reduce the price of securities would occasion serious, if not fatal, results to the banks most extensively engaged in such operations, and would produce a feeling of insecurity which would be very dangerous to the entire banking interest of the country."*

All this machinery was now put in motion; the banks and their customers were forced into the false position described, and towards the end of October it had become perfectly notorious in Wall Street that large new issues of Erie had been made, and that these new issues were intimately connected with the sharp stringency then existing in the money market. It was at last determined to investigate the matter, and upon the 27th of the month a committee of three was appointed by the Stock Exchange to wait upon the officers of the corporation with the view of procuring such information as they might be willing to impart. The committee called on Mr. Gould and stated the object of their visit. In reply to their inquiries Mr. Gould informed them that Erie convertible bonds for ten millions of dollars had been issued, half of which had already been converted into stock, and the rest of which would be; that the money had been devoted to the purchase of Boston, Hartford, and Erie bonds for five millions, and also — of course — to payments for steel rails. The committee desired to know

*Finance Report, 1868, pp. 20, 21.

if any further issue of stock was in contemplation, but were obliged to rest satisfied with a calm assurance that no new issue was just then contemplated except "in certain contingencies"; from which enigmatical utterances Wall Street was left to infer that the exigencies of Messrs. Gould and Fisk were elements not to be omitted from any calculations as to the future of Erie and the money market. The amount of these issues of new stock was, of course, soon whispered in a general way; but it was not till months afterwards that a sworn statement of the secretary of the Erie Railway revealed the fact that the stock of the corporation had been increased from \$34,265,300 on the 1st of July, 1868, the date when Drew and his associates had left it, to \$57,766,300 on the 24th of October of the same year, or by two hundred and thirty-five thousand shares in four months. This, too, had been done without consultation with the board of directors and with no other authority than that conferred by the ambiguous resolution of February 19th. Under that resolution the stock of the company had now been increased one hundred and thirty-eight per cent in eight months. Such a process of inflation may, perhaps, justly be considered the most extraordinary feat of financial legerdemain which history has yet recorded.

Now, however, when the committee of the Stock Exchange had returned to those who sent them, the mask was thrown off, and operations were conducted with vigor and determination. New issues of Erie were continually forced upon the market until the stock fell to 35; greenbacks were locked up in the vaults of the banks, until the unexampled sum of twelve millions was withdrawn from circulation; the prices of securities and merchandise declined; trade and the autumnal movement of the crops were brought almost to a stand-still; and loans became more and more difficult to negotiate, until at length even one and a half per cent a day was paid for carrying stocks. Behind all this it was notorious that some one was pulling the wires, the slightest touch upon which sent a quiver through every nerve of the great financial organism, and wrung private gain from public agony. The strange proceeding reminds one of those scenes in the chambers of the Inquisition where the judges calmly put their victim to the question, until his

spasms warned them not to exceed the limits of human endurance. At last the public distress reached the ears of the Government at Washington. While it was simply the gamblers of Wall Street who were tearing each other, their clamor for relief excited little sympathy. When, however, the suffering had extended through all the legitimate business circles of the country, — when the scarcity of money threatened to cut off the winter food of the poor, to rob the farmer of the fruits of his toil, and to bring ruin upon half of the debtor class of the community, — then even Mr. McCulloch, pledged as he was to contraction, was moved to interfere. The very revenues of the government were affected by the operations of gamblers. They were therefore informed that, if necessary, fifty millions of additional currency would be forthcoming to the relief of the community, and then, and not till then, were the screws loosened.

The harvest of the speculators, however, was still but half gathered. Hitherto the combination had operated for a fall. Now was the moment to change their tactics and take advantage of the rise. The time was calculated to a nicety. The London infatuation had continued wonderfully, and as fast as certificates of stock were issued they seemed to take wings across the Atlantic. Yet there was a limit even to English credulity, and in November it became evident that the agents of foreign houses were selling their stock to arrive. The price was about 40; the certificates might be expected by the steamer of the 23d. Instantly the combination changed front. As before they had depressed the market, they now ran it up, and, almost as if by magic, the stock, which had been heavy at 40, astonished every one by shooting up to 50. New developments were evidently at hand.

At this point Mr. Daniel Drew once more made his appearance on the stage. As was very natural, he had soon wearied of the sameness of his part as a mere looker on in Wall Street, and had relapsed into his old habits. He was no longer treasurer of the Erie, and could not therefore invite the public to game, while he himself with sombre piety shook the loaded dice. But it had become with him a second nature to operate in Erie, and once more he was deep in its movements. At first

he had combined with his old friends, the present directors, in their "locking-up" conspiracy. He had agreed to assist them to the extent of four millions. The vacillating, timid nature of the man, however, could not keep pace with his more daring and determined associates, and, after embarking a million, becoming alarmed at the success of the joint operations and the remonstrances of those who were threatened with ruin, he withdrew his funds from the operators' control and himself from their councils. But though he did not care to run the risk or to incur the odium, he had no sort of objection to sharing the spoils. Knowing, therefore, or supposing that he knew, the plan of campaign, and that plan jumping with his own bearish inclinations, he continued, on his own account, operations looking to a fall. One may easily conceive the wrath of the Erie operators at such a treacherous policy; and it is not difficult to imagine their vows of vengeance. Meanwhile all went well with Daniel Drew. Erie looked worse and worse, and the golden harvest seemed drawing near. By the middle of November he had contracted for the delivery of some seventy thousand shares at current prices, averaging, perhaps, 38, and probably was counting his gains. He did not appreciate the full power and resources of his old associates. On the 14th of November their tactics changed, and he found himself involved in terrible entanglements, — cornered, hopelessly cornered. His position disclosed itself on Saturday. Naturally the first impulse was to have recourse to the courts. An injunction — a dozen injunctions — could be had for the asking, but, unfortunately, could be had by both parties. Drew's own recent experience, and his intimate acquaintance with the characters of Fisk and Gould, were not calculated to inspire him with much confidence in the efficacy of the law. But nothing else remained, and, after hurried consultations among the victims, the lawyers were applied to, the affidavits were prepared, and it was decided to repair on the following Monday to the so-called courts of justice.

Nature, however, had not bestowed on Daniel Drew the steady nerve and sturdy gambler's pride of either Vanderbilt or his old companions at Jersey City. His mind wavered and hesitated between different courses of action. His only

care was for himself, his only thought was of his own position. He was willing to betray one party or the other, as the case might be. He had given his affidavit to those who were to bring the suit on the Monday, but he stood perfectly ready to employ Sunday in betraying their counsels to the defendants in the suit. A position more contemptible, a state of mind more pitiable, can hardly be conceived. After passing the night in this abject condition, on the morning of Sunday he sought out Mr. Fisk for purposes of self-humiliation and treachery. He then partially revealed the difficulties of his situation, only to have his confidant prove to him how entirely he was caught by completing to him the revelation. He betrayed the secrets of his new allies, and bemoaned his own hard fate; he was thereupon comforted by Mr. Fisk with the cheery remark that "he (Drew) was the last man who ought to whine over any position in which he placed himself in regard to Erie." The poor man begged to see Mr. Gould, and would take no denial. Finally Mr. Gould was brought in, and the scene was repeated for his edification. The two must have been satiated with revenge. At last they sent him away, promising to see him again that evening. At the hour named he again appeared, and, after waiting their convenience, — for they spared him no humiliation, — he again appealed to them, offering them great sums if they would issue new stock or lend him of their stock. He implored, he argued, he threatened. At the end of two hours of humiliation, persuaded that it was all in vain, that he was wholly in the power of antagonists without mercy, he took his hat, said "I will bid you good night," and went his way.

There is a touch of nature about this scene which seems like fiction. Indeed it irresistibly recalls the feebler effort of Dickens to portray Fagin's last night alive, and there is more pathos in the parting address than in the Jew's, — "An old man, my lord! a very, very old man." But the truth is stranger than fiction. Dickens did not dare to picture the old "fence" in *Oliver Twist* turned out of his own house and stripped of his plunder by the very hands through which he had procured it. In the case of Daniel Drew, however, the ideal poetic justice was brought about in fact; the evil instructions returned to plague

the inventor, and it is hard to believe that, as he left the Erie offices that night, his apt pupils, even as those of Fagin might have done, did not watch his retiring steps with suppressed merriment; and, when the door had closed upon him, that the one did not explode in loud bursts of laughter, while the other, with a quiet chuckle, plunged his hands into those capacious pockets which yawned for all the wealth of Erie. Bad as all these things are, terrible as is the condition of affairs only partially revealed, there is a grim humor running through them which ever makes itself felt.

But to return to the course of events. With the lords of Erie, forewarned was forearmed. They knew something of the method of procedure in New York courts of law. At this particular juncture Mr. Justice Sutherland, a magistrate of such pure character and unsullied reputation that it is inexplicable how he ever came to be elevated to the bench on which he sits, was holding chambers, according to assignment, for the four weeks between the first Monday in November and the first Monday in December. By a rule of the court, all applications for orders during that time were to be made before him, and he only, according to the courtesy of the Bench, took cognizance of such proceedings. Some general arrangement of this nature is manifestly necessary to avoid continual conflicts of jurisdiction. The details of the assault on the Erie directors having been settled, counsel appeared before Judge Sutherland on Monday morning, and petitioned for an injunction restraining the Erie directors from any new issue of stock or the removal of the funds of the company beyond the jurisdiction of the court, and also asking that the road be placed in the hands of a receiver. The suit was brought in the name of Mr. Auguste Belmont, who was supposed to represent large foreign holders. The petition set forth at length the alleged facts in the case, and was supported by the affidavits of Mr. Drew and others. Mr. Drew apparently did not inform the counsel of the manner in which he had passed his leisure hours on the previous day; had he done so, Mr. Belmont's counsel probably would have expedited their movements. The injunction was, however, duly signed, and, doubtless, immediately served.

Meanwhile Messrs. Gould and Fisk had not been idle. Ap-

plications for injunctions and receiverships were a game that two could play at, and long experience had taught these close observers the very great value of the initiative in law. Accordingly, some two hours before the Belmont application was made they had sought out no less a person than Mr. Justice Barnard, caught him, as it were, either in his bed or at his breakfast, whereupon he had held a *lit de justice*, and made divers astonishing orders. A petition was presented in the name of one McIntosh, a salaried officer of the Erie Road, who claimed also to be a shareholder. It set forth the danger of injunctions and of the appointment of a receiver, the great injury likely to result therefrom, etc. After due consideration on the part of Judge Barnard, an injunction was issued, staying and restraining all suits, and actually appointing Jay Gould receiver, to hold and disburse the funds of the company in accordance with the resolutions of the Board of Directors and the Executive Committee. This, certainly, was a very brilliant flank movement, and testified not less emphatically to Gould's genius than to Barnard's law, and to the efficacy of the new combination between Tammany Hall and the Erie Railway. Since the passage of the bill "to legalize counterfeit money," in April and the present November, new light had burst upon the judicial mind, and as the news of one injunction and a vague rumor of the other crept through Wall Street that day, it was no wonder that operators stood aghast and that Erie fluctuated wildly from 50 to 61 and back to 48.

The Erie directors, however, did not rest satisfied with the position which they had won through Judge Barnard's order. That simply placed them, as it were, in a strong defensive attitude. They were not the men to stop there: they aspired to nothing less than a vigorous offensive. With a superb audacity, which excites admiration, the new trustee immediately filed a supplementary petition. Therein it was duly set forth that doubts had been raised as to the legality of the recent issue of some two hundred thousand shares of stock, and that only about this amount was to be had in America; the trustee therefore petitioned for authority to use the funds of the corporation to purchase and cancel the whole of this amount at any price less than the par value, without regard to

the rate at which it had been issued. The desired authority was conferred by Mr. Justice Barnard as soon as asked. Human assurance could go no further. The petitioners had issued these shares in the bear interest at 40, and had run down the value of Erie to 35; they had then turned round, and were now empowered to buy back that very stock in the bull interest, and in the name of the corporation, at par. A law of the State distinctly forbade corporations from operating in their own stock; but this law was disregarded, as if it had been only an injunction. An injunction forbade the treasurer from making any disposition of the funds of the company, and this injunction was respected no more than the law. These trustees had sold the property of their wards at 40; they were now prepared to use the money of their wards to buy the same property back at 80, and a judge had been found ready to confer on them the power to do so. Drew could not withstand such tactics, and indeed the annals of Wall Street furnished no precedent or parallel. They might have furnished one, but the opportunity had been lost. Had Robert Schuyler not lived fifteen years too soon, — had he, instead of flying his country and dying broken-hearted in exile, boldly attempted a change of front when his fraudulent issues had filled Wall Street with panic, and had he sought to use the funds of his company for a masterly upward movement in his own manufactured stock, — then, though in those uncultivated and illiberal days he might have failed, and even have passed from the presence of an indignant jury into the keeping of a surly jailer, at least he would have evinced a mind in advance of his day, and could have comforted himself with the assurance that he was the first of a line of great men, and that the time was not far distant when his name and his fame would be cherished among the most brilliant recollections of Wall Street.

When this last, undreamed-of act was made public on Wednesday at noon, it was apparent that the crisis was not far off. Daniel Drew was cornered. Erie was scarce and selling at 47, and would not become plenty until the arrival of the English steamer on Monday; and so, at 47, Mr. Drew flung himself into the breach to save his endangered credit, and, under his purchases, the stock rapidly rose, until at five o'clock on

Wednesday afternoon it reached 57. Contrary to expectation, the "corner" had not yet culminated. It became evident the next morning that before two o'clock that day the issue would be decided. Drew fought desperately. The Brokers' Board was wild with excitement. High words passed; collisions took place; the bears were savage, and the bulls pitiless. Erie touched 62, and there was a difference of sixteen per cent between cash stock and stock sold to be delivered in three days, — when the steamer would be in, — and a difference of ten per cent between stock to be delivered on the spot and that to be delivered at the usual time, which was a quarter after two o'clock. Millions were handled like thousands; fabulous rates of interest were paid; rumors of legal proceedings were flying about, and forays of the Erie chiefs on the Vanderbilt roads were confidently predicted. New York Central suddenly shot up under these influences seven per cent, and Vanderbilt seemed about to enter the field. The interest of the stock market centred in the combatants and on these two great corporations. All other stocks were quiet and neglected, while the giants were fighting it out. The battle was too fierce to last long. At a quarter before three o'clock the struggle would be over. Yet now, at the very last moment, the prize which trembled before them eluded the grasp of the Erie ring. Their opponent was not saved, but they shared his disaster. Their combination had turned on the fact, disclosed to them by the Erie books, that some three hundred thousand shares of its stock had been issued in the ten-share certificates which alone are transmitted to London. This amount they supposed to be out of the country; the balance they could account for as beyond the reach of Drew. Suddenly, as two o'clock approached, and Erie was trembling in the sixties, all Broadway — every tailor and bootmaker and cigar vendor of New York — seemed pouring into Broad Street, and each new-comer held eagerly before him one or more of those ten-share certificates which should have been in London. Not only this, but the pockets of the agents of foreign bankers seemed bursting with them. Bedlam had suddenly broken loose in Wall Street. It was absolutely necessary for the conspirators to absorb this stock, to keep it from the hands of Drew. This they attempted to do, and manfully stood

their ground, fighting against time. Suddenly, when the hour had almost come, — when five minutes more would have landed them in safety, — through one of those strange incidents which occur in Wall Street, and which cannot be explained, they seemed smitten with panic. It is said their bank refused to certify their checks for the sudden increased amount; the sellers insisted on having certified checks, and, in the delay caused by this unforeseen difficulty, the precious five minutes elapsed, and the crisis had passed. The fruits of their plot had escaped them. Drew made good his contracts at 57, the stock at once fell heavily to 42, and a dull quiet succeeded to the excitement of the morning.

The Wall Street conflict was over, and some one had reaped a harvest. Who was it? It was not Drew, for his losses, apart from a ruined prestige, were estimated at nearly a million and a half of dollars. The Erie directors were not the fortunate men, for their only trophies were great piles of certificates of Erie stock, which had cost them "corner" prices, and for which no demand existed. If Drew's loss was a million and a half, their loss was likely to be nearer to three millions. Who, then, were the recipients of these missing millions? There is an ancient saying, which seems to have been tolerably verified in this case, that when certain persons fall out certain other persons come by their dues. The "corner" was very beautiful in all its details, and most admirably planned; but, unfortunately, those who engineered it had just previously made the volume of stock too large for accurate calculation. For once the outside public had been at hand and Wall Street had been found wanting. A large portion of the vast sum taken from the combatants found its way into the pockets of the agents of English bankers, and a part of it was accounted for by them to their principals; another portion went to relieve anxious holders among the American outside public; the remainder fell to professional operators, probably far more lucky than sagacious. Still, there had been a fall, before there was a rise. The subsequent disaster, perhaps, no more than counterbalanced the earlier victory; at any rate, Messrs. Gould and Fisk did not succumb, but preserved a steady front, and Erie was more upon the street than ever. In fact,

it was wholly there now. The recent operations had proved too outrageous even for the Brokers' Board. A new rule was passed, that no stock should be called the issues of which were not registered at some respectable banking-house. The Erie directors declined to conform to this rule, and their road was stricken from the list of calls. Nothing daunted by this, these Protean creatures at once organized a new board of their own, and were sufficiently successful in their efforts to have Erie quoted and bought and sold as regularly as ever.

Though the catastrophe had taken place on the 19th, the struggle was not yet over. The interests involved were so enormous, the developments were so astounding, such passions had been aroused, that some safety-valve through which suppressed wrath could work itself off was absolutely necessary, and this the courts of law afforded. The attack was stimulated by various motives. The *bona fide* holders of the stock, especially the foreign holders, were alarmed for the existence of their property. The Erie ring had now boldly taken the position that their duty was, not to manage the road in the interests of its owners, not to make it a dividend-paying corporation, but to preserve it from consolidation with the Vanderbilt monopoly. This policy was openly proclaimed by Mr. Gould, at a later day, before an investigating committee at Albany. With unspeakable effrontery,—an effrontery so great as actually to impose on his audience and a portion of the press, and make them believe that the public ought to wish him success,—he described how stock issues at the proper time to any required amount could alone keep him in control of the road, and keep Mr. Vanderbilt out of it; it would be his duty therefore, he argued, to issue as much new stock, at about the time of the annual election, as would suffice to keep a majority of all the stock in existence under his control; and he declared that he meant to do this. The strangest thing of all was, that it never seemed to occur to his audience that the propounder of this comical sophistry was a trustee and guardian for the stockholders, and not a public benefactor; and that the owners of the Erie Road might possibly prefer not to be deprived of their property, in order to secure the blessing of competition. So unique

a method of securing a re-election was probably never before suggested with a grave face, and yet, if we may believe the reporters, Mr. Gould, in developing it, produced a very favorable impression on the committee. It was hardly to be expected that such advanced views as to the duties and powers of railway directors would impress favorably commonplace individuals who might not care to have their property scaled down to meet Mr. Gould's views of public welfare. These persons accordingly, popularly supposed to be represented by Mr. Belmont, wished to get their property out of the hands of such fanatics in the cause of cheap transportation and plentiful stock, with the least possible delay. Combined with these were the operators who had suffered in the late "corner," and who desired to fight for better terms and a more equal division of plunder. Behind them all, Vanderbilt was supposed to be keeping an eager eye on the long-coveted Erie. Thus the materials for litigation existed in abundance.

On Monday, the 23d, Judge Sutherland vacated Judge Barnard's order appointing Jay Gould receiver, and, after seven hours' argument and some exhibitions by counsel of vulgarity and indecency, which vied with those of the previous April, he appointed Mr. Davies, an ex-chief justice of the Court of Appeals, receiver of the road and its franchise, leaving the special terms of the order to be settled at a future day. The seven hours' struggle had not been without an object, for, before the order was entered at nine o'clock in the evening, Judge Barnard — who had employed his time since the 16th in delivering to the grand jury one of the most extraordinary charges ever listened to, in which he had informed them that he was "dependent on the charity of his wife" to eke out a precarious support, and edified them in regard to a "combination of thieves, scoundrels, and rascals who had infested Wall Street and Broad Street for years, and were now quarrelling among themselves"* — had already issued a stay of the proceedings then pending before his associate. Tuesday had been named by Judge Sutherland, at the time he appointed his receiver, as

* The whole of this curiosity of legal literature, which, with its subsequent history, should by no means be lost to posterity, can be found in the *New York Times* of November 24, and the *Evening Post* of December 1, 1868.

the day upon which he would settle the details of the order. His first proceeding upon that day, on finding his action stayed by Judge Barnard, was to grant a motion to show cause, on the next day, why Barnard's order should not be vacated. This style of warfare, however, savored altogether too much of the tame defensive to meet successfully the bold strategy of Messrs. Gould and Fisk. They carried the war into Africa. In the twenty-four hours during which Judge Sutherland's order to show cause was pending three new actions were commenced by them. In the first place, they sued the suers. Alleging the immense injury likely to result to the Erie Road from actions commenced, as they alleged, solely with a view of extorting money in settlement, Mr. Belmont was sued for a million of dollars in damages. Their second suit was against Messrs. Work, Schell, and others, concerned in the litigations of the previous spring, to recover the \$429,250 then paid them, as was alleged, in a fraudulent settlement. These actions were, however, commonplace, and might have been brought by ordinary men. Messrs. Gould and Fisk were always displaying the invention of genius. The same day they carried their quarrels into the United States courts. The whole press, both of New York and of the country, disgusted with the parody of justice enacted in the State courts, had cried aloud to have the whole matter transferred to the United States tribunals, the decisions of which might have some weight, and where, at least, no partisans upon the bench would shower each other with stays, injunctions, vacatings of orders, and other such pellets of the law. The Erie ring, as usual, took time by the forelock. While their slower antagonists were deliberating, they acted. On this Monday, the 23d, one Henry B. Whelpley, who had been a clerk of Gould's, and who claimed to be a stockholder in the Erie and a citizen of New Jersey, instituted a suit against the Erie Railway before Judge Blatchford of the United States District Court. Alleging the doubts which hung over the validity of the recently issued stock, he petitioned that a receiver might be appointed, and the company directed to transfer into his hands enough property to secure from loss himself, as well as all other holders of the new issues. The Erie counsel were on the ground, and, as soon

as the petition was read, waived all further notice as to the matters contained in it; whereupon the court at once appointed Jay Gould receiver, and directed the Erie Company to place eight millions of dollars in his hands to protect the rights represented by the plaintiff. Of course the receiver was required to give bonds with sufficient sureties. Among the sureties was James Fisk, Jr. The brilliancy of this move was only surpassed by its success. It fell like a bombshell in the enemy's camp, and scattered dismay among those who still preserved a lingering faith in the virtue of law as administered by any known courts. On what ground so highly respectable a magistrate as Judge Blatchford based this extraordinary order is not known. His action was asked for on the ground of fraud. If any fraud had been committed, the officers of the company alone could be the delinquents. To guard against the consequences of that fraud a receiver was asked for, and the court appointed as receiver the very officer in whom the alleged frauds on which its action was based must have originated. The Erie ring, at least, had no occasion to be dissatisfied with this day's proceedings.

The next day Judge Sutherland made short work of his brother Barnard's stay of proceedings in regard to the Davies receivership. He vacated it at once, and incontinently proceeded, wholly ignoring the action of Judge Blatchford on the day before, to settle the terms of the order, which, covering as it did the whole of the Erie property and franchise, excepting only the operating of the road, bade fair to lead to a conflict of jurisdiction between the State and Federal courts.

And now a new judicial combatant appears in the arena. It is difficult to say why Judge Barnard, at this time, disappears from the narrative. Perhaps the notorious judicial violence of the man, which must have made his eagerness as dangerous to the cause he espoused as the eagerness of a too swift witness, had alarmed the Erie counsel. Perhaps the fact that Judge Sutherland's term in chambers would expire in a few days had made them wish to intrust their cause to the magistrate who was to succeed him. At any rate, the new order staying proceedings under Judge Sutherland's order was obtained from Judge Cardozo, — it is said, somewhat before the

terms of the receivership had been finally settled. The change spoke well for the discrimination of those who made it, for Judge Cardozo is a very different man from Judge Barnard. Courteous but inflexible, subtle, clear-headed, and unscrupulous, this magistrate conceals the iron hand beneath the silken glove. Equally versed in the laws of New York and in the mysteries of Tammany, he had earned his place by a partisan decision on the excise law, and was nominated for the bench by Mr. Fernando Wood, in a few remarks concluding as follows: "Judges were often called on to decide on political questions, and he was sorry to say the majority of them decided according to their political bias. It was therefore absolutely necessary to look to their candidate's political principles. He would nominate, as a fit man for the office of Judge of the Supreme Court, Albert Cardozo." Nominated as a partisan, a partisan Cardozo has always been, when the occasion demanded. Such was the new and far more formidable champion who now confronted Sutherland, in place of the vulgar Barnard. His first order in the matter—to show cause why the order of his brother judge should not be set aside—was not returnable until the 30th, and in the intervening five days many events were to happen.

Immediately after the settlement by Judge Sutherland of the order appointing Judge Davies receiver, that gentleman had proceeded to take possession of his trust. Upon arriving at the Erie building, he found it converted into a fortress, with a sentry patrolling behind the bolts and bars, to whom was confided the duty of scrutinizing all comers, and of admitting none but the faithful allies of the garrison. It so happened that Mr. Davies, himself unknown to the custodian, was accompanied by Mr. Eaton, the former attorney of the Erie corporation. This gentleman was recognized by the sentry, and forthwith the gates flew open for himself and his companion. In a few moments more the new receiver astonished Messrs. Gould and Fisk, and certain legal gentlemen with whom they happened to be in conference, by suddenly appearing in the midst of them. The apparition was not agreeable. However, Mr. Fisk, with a fair appearance of cordiality, welcomed the strangers, and shortly after left the room. Speedily returning, his manner underwent

a change, and he requested the new-comers to go the way they came. As they did not comply at once, he opened the door, and directed their attention to some dozen men of forbidding aspect who stood outside, and who, he intimated, were prepared to eject them forcibly if they sought to prolong their unwelcome stay. As an indication of the lengths to which Mr. Fisk was prepared to go, this was sufficiently significant. The movement, however, was a little too rapid for his companions; the lawyers protested, Mr. Gould apologized, Mr. Fisk cooled down, and his familiars retired. The receiver then proceeded to give written notice of his appointment, and the fact that he had taken possession; disregarding, in so doing, an order of Judge Cardozo, staying proceedings under Judge Sutherland's order, which one of the opposing counsel drew from his pocket, but which Mr. Davies not inaptly characterized as a "very singular order," seeing that it was signed before the terms of the order it sought to affect were finally settled. At length, however, at the earnest request of some of the subordinate officials, and satisfied with the formal possession he had taken, the new receiver delayed further action until Friday. He little knew the resources of his opponents, if he vainly supposed that a formal possession signified anything. The succeeding Friday found the directors again fortified within, and himself a much enjoined wanderer without. The vigilant guards were now no longer to be beguiled. Within the building, constant discussions and consultations were taking place; without, relays of detectives incessantly watched the premises. No rumor was too wild for public credence. It was confidently stated that the directors were about to fly the State and the country,—that the treasury had already been conveyed to Canada. At last, late on Sunday night, Mr. Fisk with certain of his associates left the building, and made for the Jersey ferry; but on the way he was stopped by a vigilant lawyer, and many papers were served upon him. His plans were then changed. He returned to the office of the company, and presently the detectives saw a carriage leave the Erie portals, and heard a loud voice order it to be driven to the Fifth Avenue Hotel. Instead of going there, however, it drove to the ferry, and presently an engine, with an empty directors' car attached, dashed out of the

Erie station in Jersey City, and disappeared in the darkness. The detectives met and consulted; the carriage and the empty car were put together, and the inference, announced in every New York paper the succeeding day, was that Messrs. Fisk and Gould had absconded with millions of money to Canada.

That such a ridiculous story should have been published, much less believed, simply shows how utterly demoralized the public mind had become, and how prepared for any act of high-handed fraud or outrage. The libel did not long remain uncontradicted. The next day a card from Mr. Fisk was telegraphed to the newspapers, denying the calumny in indignant terms. The eternal steel rails were again made to do duty, and the midnight flitting became a harmless visit to Binghamton on business connected with a rolling-mill. Judge Balcom, however, of injunction memory in the earlier records of the Erie suits, resided at Binghamton, and a leading New York paper not inaptly made the timid inquiry of Mr. Fisk, "If he really thought that Judge Balcom was running a rolling-mill of the Erie Company, what did he think of Judge Barnard?" However, Mr. Fisk, as became him in his character of the Maecenas of the bar, instituted suits claiming damages in fabulous sums, for defamation of character, against some half-dozen of the leading papers, and nothing further was heard of the matter, nor indeed of the suits either. Not so of the trip to Binghamton. On Tuesday, the 1st of December, while one set of lawyers were arguing an appeal in the Whelpley case before Judge Nelson in the Federal courts, and another set were procuring orders from Judge Cardozo staying proceedings authorized by Judge Sutherland, a third set were aiding Judge Balcom in certain new proceedings instituted in the name of the Attorney-General against the Erie Road. The result arrived at was, of course, that Judge Balcom declared his to be the only shop where a regular, reliable article in the way of law was retailed, and then proceeded forthwith to restrain and shut up the opposition establishments. The action was brought to terminate the existence of the defendant as a corporation, and, by way of preliminary, application was made for an injunction and the appointment of a receiver. His honor held that, as only three receivers had as yet been appointed,

he was certainly entitled to appoint another. It was perfectly clear to him that it was his duty to enjoin the defendant corporation from delivering the possession of its road, or of any of its assets, to either of the receivers already appointed ; it was equally clear that the corporation would be obliged to deliver them to any receiver he might appoint. However, he was not prepared to name a receiver just then, though he intimated that he should not hesitate to do so if necessary. So he contented himself with the appointment of a referee to look into matters, and, generally, enjoined the directors from omitting to operate the road themselves, or from delivering the possession of it to " any person claiming to be a receiver.

This raiding upon the agricultural judges was not peculiar to the Erie party. On the contrary, in this proceeding they rather followed than set an example ; for, a day or two previous to Mr. Fisk's hurried journey, Judge Peckham of Albany had, upon papers identical with those in the Belmont suit, issued divers orders, similar to those of Judge Balcom, but on the other side, tying up the Erie directors in a most astonishing manner, and clearly hinting at the expediency of an additional receiver to be appointed at Albany. The amazing part of these Peckham and Balcom proceedings is that they seem to have been initiated with perfect gravity, and neither to have been looked upon as jests nor intended by their originators to bring the courts and the laws of New York into ridicule and contempt. Of course the several orders in these cases were of no more importance than so much waste paper, unless, indeed, some very cautious counsel may have considered an extra injunction or two very convenient things to have in his house ; and yet, curiously enough from a legal point of view, those in Judge Balcom's court seem to have been about the only properly and regularly initiated proceedings in the whole case.

These little rural episodes in no way interfered with a renewal of vigorous hostilities in New York. While Judge Balcom was appointing his referee, Judge Cardozo granted an order for a reargument in the Belmont suit,—which brought up again the appointment of Judge Davies as receiver,—and assigned the hearing for the 6th of December. This step on his part reminds one of certain performances in the no-

torious case of the Wood leases, and made the plan of operations perfectly clear. The period during which Judge Sutherland was to sit in chambers was to expire on the 4th of December, and Cardozo himself was to succeed him; he now, therefore, proposed to signalize his associate's departure from chambers by reviewing his orders. No sooner had he granted the motion, than the opposing counsel applied to Judge Sutherland, who forthwith issued an order to show cause why the reargument ordered by Judge Cardozo should not take place before him at once. Upon which the counsel of the Erie Road instantly ran over to Judge Cardozo, who vacated Judge Sutherland's order out of hand. The lawyers then left him and ran back to Judge Sutherland with a motion to vacate this last order. The contest was now becoming altogether too ludicrous. Somebody must yield, and, when it was reduced to that, the honest Sutherland was pretty sure to give way to the subtle Cardozo. Accordingly the hearing on this last motion was postponed until the next morning, when Judge Sutherland made a not undignified statement as to his position, and closed by remitting the whole subject to the succeeding Monday, at which time Judge Cardozo was to succeed him in chambers. Cardozo, therefore, was now in undisputed possession of the field. In his closing explanation Judge Sutherland did not quote, as he might have done, the following excellent passage from the opinion of the court of which both he and Cardozo were justices, delivered in the Schell case as recently as the last day of the previous June: "The idea that a cause by such manœuvres as have been resorted to here can be withdrawn from one judge of this court and taken possession of by another; that thus one judge of the same and no other powers can practically prevent his associate from exercising his judicial functions; that thus a case may be taken from judge to judge whenever one of the parties fears that an unfavorable decision is about to be rendered by the judge who, up to that time, had sat in the case, and that thus a decision in the suit may be constantly and indefinitely postponed at the will of one of the litigants only, deserves to be noticed as being a curiosity in legal tactics, — a remarkable exhibition of inventive genius and fertility of expedient to embarrass suits which

this extraordinarily conducted litigation has developed. Such a practice as that disclosed by this litigation, sanctioning the attempt to counteract the orders of each other in the progress of the suit, I confess is new and shocking to me, . . . and I trust that we have seen the last in this high tribunal of such practices as this case has exhibited. No apprehension, real or fancied, that any judge is about, either wilfully or innocently, to do a wrong can palliate, much less justify it." Neither did Judge Sutherland state, as he might have stated, that this admirable expression of the sentiments of the full bench was written and delivered by Judge Albert Cardozo. However, it was now very clear that Receiver Davies might abandon all hope of operating the Erie Railway, and that Messrs. Gould and Fisk were borne upon the swelling tide of victory.

The prosperous aspect of their affairs now encouraged these last-named gentlemen to yet more vigorous offensive operations. The next attack was upon Vanderbilt in person. On Saturday, the 5th of December, only two days after Judge Sutherland and Receiver Davies were disposed of, the indefatigable Fisk waited on Commodore Vanderbilt, and, in the name of the Erie Company, tendered him fifty thousand shares of Erie common stock at 70. As the stock was then selling in Wall Street at 40, the Commodore naturally declined to avail himself of this liberal offer. He even went further, and, disregarding his usual wise policy of silence, wrote to the New York Times a short communication, in which he referred to the alleged terms of settlement of the previous July, so far as they concerned himself, and denied them in the following explicit language: "I have had no dealings with the Erie Railway Company, nor have I ever sold that company any stock or received from them any *bonus*. As to the suits instituted by Mr. Schell and others, I had nothing to do with them, nor was I in any way concerned in their settlement." This was certainly an announcement calculated to confuse the public; but the confusion became confounded, when, upon the 10th, Mr. Fisk followed him in a card in which he reiterated the alleged terms of settlement, and reproduced two checks of the Erie Company, of July 11, 1868, made payable to the treasurer and by him indorsed to C. Van-

derbilt, upon whose order they had been paid. These two checks were for the sum of a million of dollars. He further said that the company had a paper in Mr. Vanderbilt's own handwriting, stating that he had placed fifty thousand shares of Erie stock in the hands of certain persons, to be delivered on payment of \$3,500,000, which sum he declared had been paid. Undoubtedly these apparent discrepancies of statement admitted of an explanation; and some thin veil of equivocation, such as the transaction of the business through third parties, justified Vanderbilt's statements to his own conscience. Comment, however, is wholly superfluous, except to call attention to the amount of weight which is to be given to the statements and denials, apparently the most general and explicit, which from time to time were made by the parties to these proceedings. This short controversy merely added a little more discredit to what was already not deficient in that respect. On the 10th of December the Erie Company sued Commodore Vanderbilt for \$3,500,000, specially alleging in their complaint the particulars of that settlement all knowledge of or connection with which the defendant had so emphatically denied.

None of the multifarious suits which had been brought as yet were aimed at Mr. Drew. The quondam treasurer had apparently wholly disappeared from the scene on the 19th of November. Mr. Fisk took advantage, however, of a leisure day to remedy this oversight, and a suit was commenced against Drew, on the ground of certain transactions between him, as treasurer, and the railway company, in relation to some steamboats concerned in the trade of Lake Erie. The usual allegations of fraud, breach of trust, and other trifling and, technically, not State prison offences, were made, and damages were set at a million of dollars.

Upon the 8th, the argument in Belmont's case had been reopened before Judge Cardozo in New York, and upon the same day, in Oneida County, Judge Boardman, another justice of the Supreme Court, had proceeded to contribute his share to the existing complications. Counsel in behalf of Receiver Davies had appeared before him, and, upon their application, the Cardozo injunction, which restrained the receiver from taking

possession of the Erie Railway, had been dissolved. Why this application was made, or why it was granted, surpasses comprehension. However, the next day, Judge Boardman's order having been read in court before Judge Cardozo, that magistrate suddenly revived to a full appreciation of the views expressed by him in June in regard to judicial interference with judicial action, and at once stigmatized Judge Boardman's action as "extremely indecorous." Neglecting, however, the happy opportunity to express an opinion as to his own conduct during the previous week, he simply stayed all proceedings under this new order, and applied himself to the task of hearing the case before him reargued.

This hearing lasted many days, was insufferably long, and inexpressibly dull. While it was going on, upon the 15th, Judge Nelson, in the United States court, delivered his opinion in the Whelpley suit, reversing, on certain technical grounds, the action of Judge Blatchford, and declaring that no case for the appointment of a receiver had been made out; accordingly he set aside that of Gould, and, in conclusion, sent the matter back to the State court, or, in other words, to Judge Cardozo, for decision. Thus the gentlemen of the ring, having been most fortunate in getting their case into the Federal court before Judge Blatchford, were now even more fortunate in getting it out of that court when it had come before Judge Nelson. After this, room for doubt no longer existed. Brilliant success at every point had crowned the strategy of the Erie directors. For once Vanderbilt was effectually routed and driven from the field. That he shrunk from continuing the contest against such opponents is much to his credit. It showed that he, at least, was not prepared to see how near he could come to the doors of a State prison and yet not enter them; that he did not care to take in advance the opinion of leading counsel as to whether what he meant to do might place him in the felons' dock. Thus Erie was wholly given over to the control of the ring. No one seemed any longer to dispute their right and power to issue as much new stock as might to them seem expedient. Injunctions had failed to check them; receivers had no terrors for them. Secure in their power, they now extended their operations over sea and land, leasing rail-

roads, buying steamboats, ferries, theatres, and rolling-mills, building connecting links of road, laying down additional rails, and generally proving themselves a power wherever corporations were to be influenced or legislatures were to be bought.

Christmas, the period of peace and good-will, was now approaching. The dreary arguments before Judge Cardozo had terminated on December 18th, long after the press and the public had ceased to pay any attention to them, and already rumors of a settlement were rife. Yet it was not meet that the settlement should be effected without some final striking catastrophe, some characteristic concluding tableau. Among the many actions which had incidentally sprung from these proceedings was one against Mr. Samuel Bowles, the editor of the Springfield Republican, brought by Mr. Fisk in consequence of an article which had appeared in that paper, reflecting most severely on Fisk's proceedings and private character,—his past, his present, and his probable future. On the 22d of December Mr. Bowles happened to be in New York, and, as he was standing in the office of his hotel, talking with a friend, was suddenly arrested on the warrant of Judge McCunn, hurried into a carriage, and driven to Ludlow Street Jail, where he was locked up for the night. This excellent jest afforded intense amusement, and was the cause of much wit that evening at an entertainment given by the Tammany ring to the newly elected Mayor of New York, at which entertainment Mr. James Fisk, Jr., was an honored guest. The next morning the whole press was in a state of high indignation, and Mr. Bowles had suddenly become the best advertised editor in the country. At an early hour he was of course released on bail, and with this outrage the second Erie contest was brought to a close. It seemed right and proper that proceedings which throughout had set public opinion at defiance, and in which the Stock Exchange, the courts, and the legislature had come in for equal measures of opprobrium for their disregard of private rights, should be terminated by an exhibition of petty spite, in which bench and bar, judge, sheriff, and jailer, lent themselves with base subserviency to a violation of the liberty of the citizen.

It was not until the 10th of February that Judge Cardozo

published his decision setting aside the Sutherland receivership, and establishing on a basis of authority the right to over-issue stock at pleasure. The subject was then as obsolete and forgotten as though it had never absorbed the public attention and another "settlement" had already been effected. The details of this arrangement have not yet been dragged to light through the exposures of subsequent litigation. But by careful reading between the lines, it is easy to see how a combination of overpowering influence may have been effected, and a guess might even be hazarded as to its objects and its victims. The fact that a settlement had been arrived at was intimated in the papers of the 26th of December. On the 19th of the same month a stock dividend of eighty per cent in the New York Central had been suddenly declared by Vanderbilt. Presently the legislature met. While the Erie ring seemed to have good reasons for apprehending hostile legislation, Vanderbilt, on his part, might have feared for the success of a bill which was to legalize his new stock. But hardly a voice was raised against the Erie men, and the bill of the Central was safely carried through. This curious absence of opposition did not stop here, and soon the two parties were seen united in an active alliance. Vanderbilt wanted to consolidate his roads; the Erie directors wanted to avoid the formality of annual elections. Thereupon two other bills went hastily through this honest and patriotic legislature, the one authorizing the Erie Board, which had been elected for one year, to classify itself so that one fifth only of its members should vacate office during each succeeding year, the other consolidating the Vanderbilt roads into one colossal monopoly. Public interests and private rights seem equally to have been the victims. It is impossible to say that the beautiful unity of interests which led to such results was the fulfilment of the December settlement; but it is a curious fact that the same paper which announced in one column that the consolidation and Central scrip bills had gone to the Governor for signature, should, in another, have reported the discontinuance of the Belmont and Whelpley suits by the consent of all interested.* It may be that public and private interests were

* See the New York Tribune of May 10th, 1869.

not thus balanced and traded away in a servile legislature, but it looks very much as if they were, and as if the settlement of December had made white even that of July. Meanwhile the conquerors — the men whose names had been made notorious through the whole land in all these infamous proceedings — walked erect and proud of their notoriety through the streets of our great cities, and looked those whom they had defrauded in the face, and boasted of their deeds and of their contempt for law and of their immunity from punishment, and still men were found to prate of the advancing tone of public opinion in free America.

Comment would only weaken the force of this narrative. It sufficiently suggests its own moral. The facts which have been set forth cannot but have revealed to every observant eye the deep decay which has eaten into every part of our social edifice. No portion of our system was left untested, and no portion showed itself to be sound. The stock exchange revealed itself as a haunt of gamblers and a den of thieves; the offices of our great corporations appeared as the secret chambers in which trustees plotted the spoliation of their wards; the law became a ready engine for the furtherance of wrong, and the ermine of the judge did not conceal the eagerness of the partisan; the halls of legislation were transformed into a mart in which the price of votes was higgled over, and laws, made to order, were bought and sold; while under all, and through all, the voice of public opinion was silent or was disregarded.

It is not, however, in connection with the present that all this has its chief significance. It speaks ominously for the future. It may be that our society is only passing through a period of ugly transition, but the present evil has its root deep down in the social organization, and springs from a diseased public opinion. Failure seems to be regarded as the one unpardonable crime, success as the all-redeeming virtue, the acquisition of wealth as the single worthy aim of life. Ten years ago such revelations as these of the Erie Railway affairs would have sent a shudder through the community, and would have placed a stigma on every man who had had to do with them. Now they merely incite others to surpass them by yet bolder outrages and more corrupt combinations.

One leading feature of these developments is, from its political aspect, especially worthy of the attention of the American people. Modern society has created a class of artificial beings who bid fair soon to be the masters of their creator. It is but a very few years since the existence of a corporation controlling a few millions of dollars was regarded as a subject of grave apprehension, and now this country already contains single organizations which wield a power represented by hundreds of millions. These bodies are the creatures of single States; but in New York, in Pennsylvania, in Maryland, in New Jersey, and not in those States alone, they are already establishing despotisms which no spasmodic popular effort will be able to shake off. Everywhere, and at all times, however, they illustrate the truth of the old maxim of the common law, that corporations have no souls. Even now the system threatens the central government. The Erie Railway represents a weak combination compared to those which day by day are consolidating under the unsuspecting eyes of the community. A very few years more and we shall see corporations as much exceeding the Erie and the New York Central in both ability and will for corruption as they will exceed those roads in wealth and in length of iron track. We shall see these great corporations spanning the continent from ocean to ocean, — single, consolidated lines, not connecting Albany with Buffalo, or Lake Erie with the Hudson, but uniting the Atlantic and the Pacific, with *termini* at New York and San Francisco. Already the disconnected members of these future leviathans have built up States in the wilderness, and chosen their attorneys Senators of the United States. Now their power is in its infancy; in a very few years they will re-enact, on a larger theatre and on a grander scale, with every feature magnified, the scenes which were lately witnessed on the narrow stage of a single State. The public corruption is the foundation on which corporations always depend for their political power. There is a natural tendency to coalition between them and the lowest strata of political intelligence and morality; for their agents must obey, not question. The lobby is their home, and the lobby thrives as political virtue decays. The ring is their symbol of power, and the ring is the natural enemy of political purity and independence. All this was abundantly illus-

trated in the events which have just been narrated. The existing coalition between the Erie Railway and the Tammany ring is a natural one, for the former needs votes, the latter money. This combination now controls the legislature and courts of New York ; that it controls also the Executive of the State, as well as that of the city, was proved when Governor Hoffman recorded his reasons for signing the infamous Erie Directors' Bill. It is a new power, for which our language contains no name. We know what aristocracy, autocracy, democracy are ; but we have no word to express government by moneyed corporations. Yet the people already instinctively seek protection against it, and look for such protection, significantly enough, not to their own legislature, but to the single autocratic feature retained in our system of Government, — the veto by the Executive. Through this Governor Hoffman won and lost his reputation in New York, and it is to the possible use of this same power by President Grant, in Washington, that the people look for security from the misdeeds of their own representatives done under the influence of corporate wealth. The next step will be interesting. As the Erie ring represents the combination of the corporation and the hired proletariat of a great city, as Vanderbilt embodies the autocratic power of Cæsarism introduced into corporate life, and as neither alone can obtain complete control of the government of the State, it, perhaps, only remains for the coming man to carry the combination of elements one step in advance, and put Cæsarism at once in control of the corporation and of the proletariat, to bring our vaunted institutions within the rule of all historic precedent.

It is not pleasant to take such views of the future ; yet they are irresistibly suggested by the events which have been narrated. They seem to be in the nature of direct inferences. The only remedy lies in a renovated public opinion ; but no indication of that has as yet been elicited. People did indeed, at one time, watch these Erie developments with interest, but the feeling excited was rather one of amazement than of indignation. Even where a real indignation was excited, it led to no sign of any persistent effort at reform ; it betrayed itself only in aimless denunciation or in sad forebodings. The danger, however, is day by day increasing,

and the period during which the work of regeneration should begin grows always shorter. It is true that evils ever work their own cure, but the cure for the evils of Roman civilization was worked out through ten centuries of barbarism. It remains to be seen whether this people retains that moral vigor which can alone awaken a sleeping public opinion to healthy and persistent activity, or whether to us also will apply these words of the latest and best historian of the Roman republic : " What Demosthenes said of his Athenians was justly applied to the Romans of this period ; that people were very zealous for action so long as they stood round the platform and listened to proposals of reform ; but, when they went home, no one thought further of what he had heard in the market-place. However those reformers might stir the fire, it was to no purpose, for the inflammable material was wanting." *

CHARLES F. ADAMS, Jr.

ART. III. — 1. *Die Religion der Griechen.* Von J. A. HARTUNG. Erlangen. 1836. 8vo.

2. *Prolegomena zu einer wissenschaftlichen Mythologie.* Von KARL OTTFRIED MÜLLER. Göttingen : Vandenhoeck und Ruprecht. 1825.

It has been common to regard the polytheism of the Greeks and Romans as an utterly false, corrupt, and corrupting system of belief ; their mythology as merely a series of graceful fables, springing from the fancy, or at best a mystic and symbolical presentation of great truths. Even those who, like the creators of the modern science of comparative mythology, rise to the conception of the fundamental unity of the religious idea, are in the habit of dwelling more upon the historical unity of origin than the essential unity of spirit. They trace with skill and insight the evidences of identity, but are apt to neglect what is individual and distinctive in religions.

* Mommsen, Vol. IV. p. 91, referring to the early Ciceronian period, B. C. 75.